

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Nyasha Smith, Secretary of the Council
FROM: Charles Allen, Chairperson, Committee on the Judiciary and Public Safety **CA**
RE: Closing Roundtable Record
DATE: November 27, 2019

Dear Ms. Smith,

Please find attached copies of the Public Oversight Roundtable Notice, Agenda and Witness List, and testimony for the Committee on the Judiciary and Public Safety's October 21, 2019, public oversight roundtable on "Five Years of the Metropolitan Police Department's Body-Worn Camera Program: Reflections and Next Steps".

The following witnesses testified at the roundtable or submitted written testimony to the Committee:

i. Public Witnesses

1. Daniel Lawrence, Senior Research Associate, Urban Institute
2. Emily Gunston, Deputy Legal Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs
3. Nassim Moshiree, Policy Director, ACLU of the District of Columbia
4. Dawn Dalton, Deputy Director, D.C. Coalition Against Domestic Violence
5. Kenithia Alston, Public Witness
6. Tyrone Bryan, Public Witness
7. Laurenda Craig, Public Witness
8. Kimberly Parker, Public Witness
9. Fritz Mulhauser, Representative, D.C. Open Government Coalition
10. Rebecca Snyder, Executive Director, Maryland/Delaware/DC Press Association
11. Michael Sindram, Public Witness
12. April Goggans, Core Organizer, Black Lives Matter DC
13. Ajoke Williams, Core Organizer, Black Lives Matter
14. Dornethia Taylor, Member, Black Lives Matter
15. Whitney Shepard, Organizer, Stop Police Terror Project D.C.
16. Dulcinea Stuk, Member, Standing Up for Racial Justice
17. Jay Brown, Public Witness

18. Anthony Lorenzo Green, Commissioner, ANC 7C04
19. Lih Young, Public Witness
20. Catherine Young, Public Witness
21. David Shurtz, Public Witness
22. Stephen Bigelow, Chair, FOP Labor Committee, D.C. Police Union
23. Gregg Archer, Representative, FOP Labor Committee, D.C. Police Union
24. James Vandermere, Representative FOP Labor Committee, D.C. Police Union
25. Electronic Privacy Information Center
26. Robert Becker, Public Witness
27. Melissa Wasser, Policy Analyst, Reporters Committee for Freedom of the Press
28. Madeleine Sterling, Commissioner, ANC 2F05

ii. Government Witnesses

1. Matthew Bromeland, Chief of Staff, Metropolitan Police Department
2. Michael Tobin, Executive Director, Office of Police Complaints
3. Niquelle Allen, Director, Office of Open Government, Board of Ethics and Government Accountability

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

REVISED

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

**FIVE YEARS OF THE METROPOLITAN POLICE DEPARTMENT'S
BODY-WORN CAMERA PROGRAM: REFLECTIONS AND NEXT STEPS**

**Monday, October 21, 2019, 10:30 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Monday, October 21, 2019, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public oversight roundtable to discuss "Five Years of the Metropolitan Police Department's Body-Worn Camera Program: Reflections and Next Steps". The roundtable will take place in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:30 a.m. *Note that this roundtable was originally scheduled for September 26.*

In October 2014, the Metropolitan Police Department ("MPD") launched Phase I of its body-worn camera program with a 400-camera model selection pilot. Phase II was launched in June 2015, in which another 400-camera expansion formed the basis for a research study on their impact on such issues as resident complaints and the use of force. Concurrently, the Council passed D.C. Law 21-83, the Body-Worn Camera Program Amendment Act of 2015, which prioritized public and civilian oversight agency access to video footage, with protections for personal privacy; established retention requirements; allowed public records requests; required program analysis; and mandated regular reporting by MPD. At the time, the Committee on the Judiciary noted that body-worn cameras can serve several purposes: (1) fostering accountability and enhancing performance by law enforcement; (2) improving police-community relations; (3) promoting the fair administration of justice; (4) creating more accurate and transparent records of law enforcement's interactions with the public; (5) improving evidence collection; and (6) discouraging and defending against erroneous complaints against law enforcement officials.

Subsequent to the law's passage, in 2016, MPD expanded its deployment to 2,800 cameras for officers and sergeants in public contact positions in all districts and other specialized units – at the time, the largest deployment of body-worn cameras in the country. As of December 2018, more than 3,100 cameras were deployed.

This public oversight roundtable will review the existing law, regulations, and MPD policies governing the body-worn camera program; MPD's biannual reports; the release of and access to video footage over the past five years; subsequent developments in other jurisdictions; and any recommendations for the program from the public, subject-matter experts, and government agencies. More broadly, the Committee will consider whether the goals underlying the procurement and deployment of body-worn cameras noted above have been advanced, and if so, how.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee via email at judiciary@dccouncil.us and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Wednesday, October 16**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on Monday, November 4.**

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

**FIVE YEARS OF THE METROPOLITAN POLICE DEPARTMENT'S
BODY-WORN CAMERA PROGRAM: REFLECTIONS AND NEXT STEPS**

**Thursday, September 26, 2019, 12:30 p.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Thursday, September 26, 2019, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public oversight roundtable to discuss “Five Years of the Metropolitan Police Department’s Body-Worn Camera Program: Reflections and Next Steps”. The roundtable will take place in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 12:30 p.m. Note that the Committee has also scheduled a public roundtable in the same room from 10 a.m. to noon.

In October 2014, the Metropolitan Police Department (“MPD”) launched Phase I of its body-worn camera program with a 400-camera model selection pilot. Phase II was launched in June 2015, in which another 400-camera expansion formed the basis for a research study on their impact on such issues as resident complaints and the use of force. Concurrently, the Council passed D.C. Law 21-83, the Body-Worn Camera Program Amendment Act of 2015, which prioritized public and civilian oversight agency access to video footage, with protections for personal privacy; established retention requirements; allowed public records requests; required program analysis; and mandated regular reporting by MPD. At the time, the Committee on the Judiciary noted that body-worn cameras can serve several purposes: (1) fostering accountability and enhancing performance by law enforcement; (2) improving police-community relations; (3) promoting the fair administration of justice; (4) creating more accurate and transparent records of law enforcement’s interactions with the public; (5) improving evidence collection; and (6) discouraging and defending against erroneous complaints against law enforcement officials.

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The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee via email at judiciary@dccouncil.us and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, September 23**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on Tuesday, October 1.**

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

**FIVE YEARS OF THE METROPOLITAN POLICE DEPARTMENT'S
BODY-WORN CAMERA PROGRAM: REFLECTIONS AND NEXT STEPS**

**Monday, October 21, 2019, 10:30 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

AGENDA AND WITNESS LIST

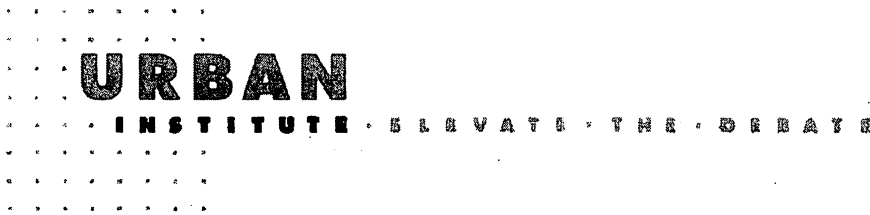
- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**
 - i. Public Witnesses
 - 1. Daniel Lawrence, Senior Research Associate, Urban Institute
 - 2. Emily Gunston, Deputy Legal Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs
 - 3. Nassim Moshiree, Policy Director, ACLU of the District of Columbia
 - 4. Gregg Archer, Representative, FOP Labor Committee, D.C. Police Union
 - 5. Dawn Dalton, Deputy Director, D.C. Coalition Against Domestic Violence
 - 6. Kenithia Alston, Public Witness
 - 7. Tyrone Bryan, Public Witness
 - 8. Laurenda Craig, Public Witness (*read by Natacia Knapper*)
 - 9. Kimberly Parker, Public Witness (*read by Natacia Knapper*)

10. Fritz Mulhauser, Representative, D.C. Open Government Coalition
11. Rebecca Snyder, Executive Director, Maryland/Delaware/DC Press Association
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18. Anthony Lorenzo Green, Commissioner, ANC 7C04
19. Salim Adofo, Commissioner, ANC 8C07
20. Lih Young, Public Witness
21. Michael Sindram, Public Witness

ii. Government Witnesses

1. Matthew Bromeland, Chief of Staff, Metropolitan Police Department
2. Michael Tobin, Executive Director, Office of Police Complaints
3. Johnnie Barton, Attorney Advisor, Office of Open Government, Board of Ethics and Government Accountability

IV. ADJOURNMENT



Daniel Lawrence, PhD
 Senior Research Associate
 Urban Institute, Justice Policy Center
dlawrence2@urban.org
 (202) 261-5309

Monday, October 21st, 2019
 1350 Pennsylvania Avenue, N.W., Room 412, Washington, D.C. 20004

Council of the District of Columbia, Committee on the Judiciary & Public Safety
 Public oversight roundtable on "Five years of the Metropolitan Police Department's body-worn camera program: reflections and next steps"

Good morning and thank you for having me today. I am Dr. Daniel Lawrence, a senior research associate in the Justice Policy Center at the Urban Institute. The views I express today are my own and should not be attributed to the Urban Institute, its trustees, or its funders. The Urban Institute is a nonpartisan, non-profit, social and economic policy research organization located in D.C. Founded in 1968, the Urban Institute brings decades of objective analysis and expertise to policy debates. The Justice Policy Center focuses on criminological research and its law enforcement portfolio is quite extensive.

In May 2015, I spoke to the council about the Metropolitan Police Department's (MPD) newly implemented body-worn camera (BWC) program in a similar setting. During that testimony, I advised that department policies for BWCs needed to be carefully considered and developed on the use and management of the cameras as well as the release of footage information. Since that time, Urban has published comprehensive reviews of BWC research,¹ developed a BWC legislation tracker for all fifty states,² and conducted studies with multiple police departments across the country to examine the impact and use of BWCs. I'll summarize the findings and policy implications now, and advise the council to review the studies.

Figure 1. Officer average body-worn camera activation rates, with time period variation

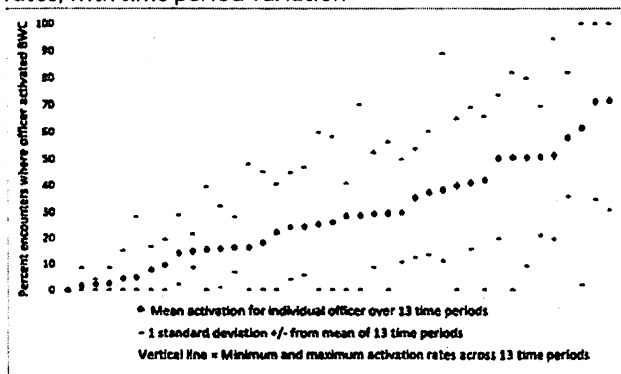
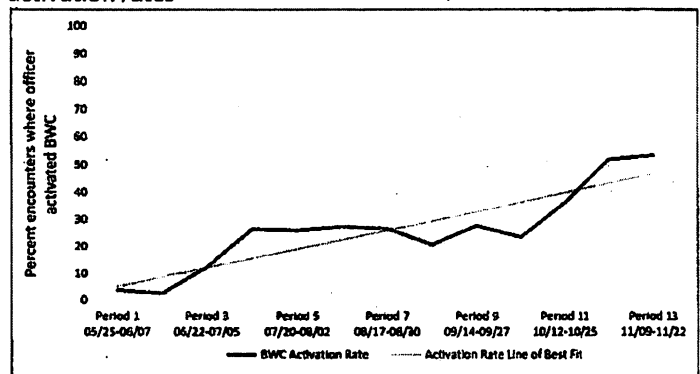


Figure 2. Time period group average body-worn camera activation rates



In Anaheim, California, we examined BWC activation rates among a group of officers.³ The department's policy is similar to MPD's where officers are expected to turn their cameras on during most, if not all, face-to-face interactions with community members. We found that activation rates among the officers varied widely in the first six-months of use, ranging from 0 to 72 percent (Figure 1). As the officers became more comfortable with the technology, activation rates increased from 3 percent to 54 percent over the 6-month period (Figure 2).

We also examine whether activations differed across policing activities, and found that officers are much more likely to activate their cameras for responses to violent and property crimes than they are for other policing activities (Figure 3). These results indicate that officers view BWCs to benefit criminal events most, and

Figure 3. Percent body-worn camera activations within activity

Policing Activity	Month of Study						
	Overall (%)	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)	6 (%)
Violent crime	44.7	7.1	41.0	53.1	62.6	52.8	61.3
Property crime	35.4	2.4	35.8	37.4	46.8	44.6	59.8
Public assist	27.0	1.9	23.2	38.5	29.7	34.0	46.3
Traffic stops	25.0	8.6	16.2	18.1	12.5	17.2	75.2
Minor crime	24.3	0.5	19.7	23.1	36.0	36.5	41.7
Disturbance	21.6	1.6	17.9	24.3	31.2	32.1	47.1
Suspicious	20.8	0.0	18.7	20.1	18.1	40.8	37.1
Proactive policing	20.7	2.7	20.8	23.4	24.2	26.9	30.6
Traffic related	16.2	2.0	13.6	25.6	14.1	21.5	24.6

perhaps rightfully so, but they miss opportunities to record positive community interactions or other types of interactions where a citizen complaint may develop. As such, the failure to activate a BWC for all types of policing activities can severely limit the potential benefits of the technology.

In Milwaukee, Wisconsin, Urban conducted multiple analyses to assess the use and impact of the department's 1,100-officer BWC program. We first examined whether BWCs affected the amount of officers who had use-of-force incidents and citizen complaints against them through a randomized controlled trial with 504 officers.⁴ Similar to the evaluation by the Lab at DC with the MPD, we found that BWCs had no impact on use-of-force incidents; however, we did find a 50% reduction in the amount of BWC-equipped officers who had a citizen complaint. While this reduction is promising, it's worth emphasizing that it is not clear if complaints were reduced because BWCs had a "civilizing effect" during police-community interactions or because community members were more reluctant to lodge a complaint against an officer wearing a BWC.

We also examined how BWCs affect officers' self-initiated activities in Milwaukee.⁵ We found that BWCs had no impact in the overall amount of proactive activities that officers conducted, but that the make-up of these activities did change. We found that officers with BWCs were less likely to engage in proactive activities that are highly discretionary and could potentially lead to confrontations with community members. Specially, officers with BWCs conducted 8 percent fewer subject stops, on average, compared to the control group. At the same time, BWC officers conducted 22 percent more park and walk activities, which serve a community policing function and are unlikely to result in confrontation or in a use of force. These findings suggest that officers are becoming more hesitant to engage in activities that may result in negative interactions with the public after receiving body cameras, and are potentially replacing these activities with ones that are potentially more positive or community-oriented.

The findings I detailed today emphasize the need for patrol officer supervisors to proactively review metrics on individual officer BWC activations across a host of different policing activities, as well as how those activities may change over time after implementation. Many studies, including some from the Urban Institute,⁶ have looked into how BWCs might affect community attitudes and views toward the officer and police. But for BWCs to be most successful, supervisors need training and policies to hold officers accountable, not just in wearing the cameras, but also in how and when the cameras are used. These capabilities for supervisors do not currently exist in policing practice. Thank you for your time.

Endnotes

Please email dlawrence2@urban.org to request copies of the cited publications.

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- ¹ Peterson, B., & Lawrence, D. S. (2019). Body cameras and policing. Oxford Research Encyclopedia of Criminology and Criminal Justice, January 2019. DOI: <http://dx.doi.org/10.1093/acrefore/9780190264079.013.524>
- ² La Vigne, N. G., Ulle, M., & Erondy, N. (2018). *Police body-worn camera legislation tracker*. Washington, DC: The Urban Institute. Retrieve from <https://apps.urban.org/features/body-camera-update/>
- ³ Lawrence, D. S., McClure, D., Malm, A., Lynch, M., & La Vigne, N. G. (2019). Activation of body-worn cameras: Variation by officer, over time, and by policing activity. *Criminal Justice Review*, 44(3), 339-355. <https://doi.org/10.1177/0734016819846228>
- ⁴ Peterson, B., Yu, L.; La Vigne, N.; & Lawrence, D. S. (2018). *The Milwaukee police department's body-worn camera program: Evaluation findings and key takeaways*. Washington, DC: The Urban Institute. Retrieve from <https://urbn.is/2khj2mf>
- ⁵ Lawrence, D. S., & Peterson, B. (forthcoming). How do body-worn cameras affect the amount and makeup of police-initiated activities? A randomized controlled trial in Milwaukee, Wisconsin. *Journal of Experimental Criminology*.
- ⁶ Lawrence, D. S., Peterson, B., & Thompson, P. (2018). Community views of Milwaukee's police body-worn camera program: Results from three waves of community surveys. Washington, DC: The Urban Institute. Retrieve from <https://urbn.is/2oimSOI>
- McClure, D., La Vigne, N., Lynch, M., Golian, L., Lawrence, D. S., & Malm, A. (2017). How body cameras affect community members' perceptions of police: Results from a randomized controlled trial of one agency's pilot. Washington, D.C.: The Urban Institute. Retrieve from www.urbn.is/2sVTocl



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

**Written Testimony of Emily Gunston, Deputy Legal Director, Before the Council of the
District of Columbia, Committee on the Judiciary and Public Safety, Concerning the
Metropolitan Police Department's Body Worn Camera Program**

October 21, 2019

Thank you for this opportunity to provide testimony regarding the Metropolitan Police Department's ("MPD") Body Worn Camera Program. For more than fifty years, the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("Washington Lawyers' Committee") has addressed issues of discrimination, racial injustice, and entrenched poverty through litigation and policy advocacy. The Washington Lawyers' Committee applauds the Judiciary Committee for opening the dialogue on this issue.

There is a crisis of trust between communities of color and the Metropolitan Police Department. The causes of this mistrust are both historic and current. Communities of color are over-policed and underserved and their complaints about abusive police practices fall on deaf ears. As policing across the nation has moved towards greater transparency, MPD has attempted to create opacity and keep important information from the public. Like its refusal to meet its obligations under the NEAR Act, it has chosen to implement a body worn camera ("BWC") policy and practice that hides information, rather than reveals it, enhancing mistrust. We urge the Council to compel MPD to follow the well-worn path of other departments and create a policy that requires the timely release of body worn camera video in appropriate circumstances and that ensures decisions to release are guided by policy, not the whim of police officials.

When effectively implemented as part of a larger program of accountability and transparency, body worn cameras can improve supervision, provide important feedback to the department on the efficacy and safety of its policing strategies, increase transparency and, ultimately, enhance community confidence and public safety. MPD's body worn camera program largely has failed to yield these important benefits. The failures in MPD's body worn camera program are emblematic of deficiencies at MPD more generally: MPD is reflexively secretive. It provides to the public only the information it is compelled to provide, rather than all the information it can provide. MPD's body worn camera program should be revised to increase public access to the videos and to ensure they are used to improve officer performance, increase accountability, and foster public trust.

There are myriad issues with MPD's body worn camera program.¹ This testimony will focus on MPD's failure to provide appropriate public access to BWC footage. MPD's policy on who is

¹ For example, the policy prohibits supervisors from routinely or randomly viewing videos for the sole purpose of enforcing policy violations observed on the recordings. MPD General Order SPT-302.13, p. 14. The policy actually should *require* supervisors to conduct random and routine audits of the BWC footage of officers they supervise. This would provide supervisors with invaluable information about officers that can be used to provide informal feedback on the effectiveness of particular approaches; highlight training concerns that impact officer and public safety; and increase accountability. That the policy prohibits this is a major failing of the policy

entitled to view body worn camera footage is too restrictive. Its policy on public release of videos after a critical incident affords unfettered discretion to the City, resulting in MPD's failure to release most videos, breeding community mistrust. The Washington Lawyers' Committee recommends the following changes: (1) Where MPD officers have killed a person, MPD should provide the person's family members an opportunity to view the BWC footage of the incident; (2) MPD should have policy that limits MPD's discretion to refuse to release publicly videos of critical incidents; and (3) MPD needs to ensure it is using BWC footage effectively to improve supervision and safety. More broadly, MPD must reframe its conception of its responsibility to and relationship with all community members.

I. MPD's BWC policy does not provide access to family members after a fatal shooting.

The Washington Lawyers' Committee represented Kenithia Alston in her efforts to gain access to the footage of her son being killed by MPD officers. That experience laid bare fundamental failures in MPD's body worn camera program.

MPD killed Kenithia Alston's son Marqueese in June 2018. Following the shooting, no one from MPD provided her with any information about her son's death. It did, however, hold a press conference to broadcast MPD's account of what happened that evening. The day after Ms. Alston saw her son's death on the news, someone from MPD came to Ms. Alston's house and informed her that Marqueese was involved in an "incident." They gave her the business card of a sergeant in Internal Affairs and a google printout of the D.C. Medical examiner's information. This is the only communication she received from the City for almost a year.

Naturally frustrated, Ms. Alston sought out help to get more information. In March 2019, Ms. Alston contacted the Washington Lawyers' Committee for Civil Rights and Urban Affairs. We told her we would help her gain access to the body worn camera footage.

Obtaining access to this video should have been a simple task. The shooting had happened a year prior. Ms. Alston was not a witness to the shooting. She simply wanted to know what happened to her son. MPD's policy is silent on this scenario -- it grants access to persons who are in a recording, and their parent/legal guardian if they are a minor. Of course, nothing in the policy prohibited MPD from allowing Ms. Alston to view the video. And, there was no good reason for denying her access. But, because MPD was not required by its policy to give her access, it refused to.

After our entreaties to MPD failed, we contacted Attorney General Karl Racine who immediately agreed to meet with Ms. Alston. He and his senior staff listened to Ms. Alston and agreed to ask the Mayor's office for access. They told Ms. Alston how sorry they were for her loss. It was the

and evinces a fundamental misunderstanding of the purposes of a BWC program.

first time anyone in District government met with her and expressed sympathy for what happened and for how she was treated.

Attorney General Racine spoke with the Mayor's office, who agreed to allow her to watch the video. When the police department contacted us to set up a time to view the video, it placed strict limits on the number of people that could accompany her to the viewing. Ms. Alston had wanted to have her pastor with her. Because there were other family members who wanted to see it, and of course, her counsel, she was unable to have the appropriate emotional support with her when she endured watching the video of her son being killed.

None of this should have happened. At each juncture, including in the officers' choice to chase Marquese instead of considering whether the situation could safely be resolved without escalating it, MPD could have and should have made different decisions.

Its failure to give Ms. Alston basic information about what happened to her son is unacceptable. Ms. Alston should not have needed to watch this horrible video to obtain information. Other departments handle this differently, in very simple ways. MPD should have contacted Ms. Alston immediately following her son's death and provided her as much information as was consistent with public safety and the integrity of the ongoing investigation. As the investigation proceeded, more information could have been provided. If MPD had made that choice, it might have gained some of Ms. Alston's trust, and she may not have needed to make the difficult choice to watch the last, violent moments of her son's life. Instead, Ms. Alston's unimaginable pain was compounded exponentially by having to watch that video, and by MPD's treatment of her.

II. MPD should have a policy that guides its decision making on the public release of videos of critical incidents.

Ms. Alston requested public release of the video of Marquese's death. MPD denied the request, citing an "ongoing investigation." MPD killed Marquese over a year ago. By now, all of the investigatory steps, such as interviewing witnesses, that could be affected by the release of the video certainly have been taken. There are no pending prosecutions and the Chief has publicly exonerated the officer. The City should not be able to hide behind the administrative step of failing to close the investigation to avoid disclosure of the video. MPD could release this video without compromising any investigation, should there actually be an ongoing inquiry. Because it is not required to, MPD has chosen not to release it.

The current law gives the City unfettered discretion to keep videos of critical incidents from the public. MPD should have a policy on when it publicly releases videos of critical incidents, such as officer involved shootings, that guides its discretion and that favors release where possible.

There are complicated and competing factors that need to be considered when determining to release a graphic video of a young man's death. But MPD and the City should not be making these decisions without public input and on a case a case basis, guided only by its own short term interests. A policy should be in place that guides that decision making—it should have as a default that the video be released within a certain time frame following the incident. The policy should include the factors that must be considered in making the determination, and the

determination in each case should be made in consultation with stakeholders that are specified in the policy. These factors should include the public interest, privacy concerns, the integrity of law enforcement investigations, and, in the case of a fatal shooting, the views of family members. Before the video is released, MPD should notify family members and involved parties. The first form of communication to the family should not come from a television screen.

A policy like this, with clear timelines for decision making, will increase transparency and provide the department a set of guiding principles so that it is not making an ad hoc decision in each case. This increased transparency will, in turn, begin to rebuild community trust. These videos are awful and they are searing. But people have a right to know what their police department is doing. And keeping them secret only breeds suspicion.

Baltimore, Seattle, and New Orleans Police Departments have policies like this in place. They apply when an officer uses force resulting in hospitalization or death; an officer intentionally shoots his or her gun at a person; an officer strikes someone in the head with an impact weapon; a police vehicle pursuit results in death or an injury requiring hospitalization; or an arrested or detain subject dies while in police custody. Other jurisdictions, such as California and Phoenix have passed laws that require that most footage be released to the public.

Setting clear deadlines on when videos should be released builds community trust. It gives the community an idea of when to expect a decision on release. California requires the release of videos within forty-five days while Baltimore requires a decision be made within seven days. Seattle releases most videos within three days.

MPD is a public agency. Communities have a right to know what it is doing. Communities should have a say in what "public safety" means and what its police department does in advance of that end. MPD always should provide as much information as it can. Of course, there always will be some information that MPD cannot release. But, in every instance, in every type of circumstance, the default should be that information is provided. If it is being withheld, there must be a good reason why and a clear articulation of that basis.

III. Recommendations

The Washington Lawyers' Committee makes the following recommendations for revisions to MPD's body worn camera program:

1. The City should form a task force, including representation from affected communities, to provide feedback on MPD's current BWC policy and practices and make recommendations for reform.
2. MPD's BWC policy should be revised to require that, after a fatal shooting, the family members of the deceased be provided with an opportunity to view the BWC footage of the incident.
3. MPD should have a policy on public release of videos of critical incidents, including uses of force resulting in hospitalization or death; intentional shootings at a person; head strikes with an impact weapon; vehicle pursuits that results in death or an injury requiring

hospitalization; deaths in police custody; and all other incidents of great public interest. The policy should require that:

- the video be released publicly unless there is a justification for withholding that is specific to that incident;
 - the decision whether to release be based on factors enumerated in the policy;
 - the decision whether to release be made in consultation with specified stakeholders, including the Mayor, the United States Attorney; the Attorney General for the District of Columbia; the Chief of Police; the defense attorney for the subject in the video; and, in the case of a fatal shooting, the family members of the deceased;
 - the decision be made and publicly provided, including the basis for withholding, within a short period of time that is specified in the policy; and
 - the subject or subject's family members be notified prior to release.
4. The BWC policy should be revised to ensure the videos are used to improve officer performance and increase accountability. This should include requiring that supervisors randomly and routinely audit BWC videos of officers they supervise and that supervisors view videos of every incident in which an officer they supervise used of force or for which there is a community complaint. MPD also should prohibit officers from viewing BWC footage before writing incident reports related to an event.

Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
DC Council Committee on Judiciary and Public Safety
Public Oversight Roundtable on "Five Years of the Metropolitan Police Department's Body-
Worn Camera Program: Reflections and Next Steps"
Monday, October 21, 2019
Room 412
by
Nassim Moshiree, Policy Director

Good morning, Councilmember Allen and members of the Committee. My name is Nassim Moshiree, and I am the Policy Director of the American Civil Liberties Union of the District of Columbia (ACLU-DC). I present the following testimony on behalf of our more than 14,000 members who live and vote in the District.

The ACLU-DC is committed to working to reverse the tide of overincarceration, safeguard fundamental liberties, eliminate racial disparities, and advocate for sensible, evidence-based criminal justice reforms. Thank you for this opportunity to testify on the District's Body-Worn Camera program.

In 2014, The Metropolitan Police Department (MPD) began outfitting its officers with body-worn cameras. The following year, the DC Council passed the "Body-Worn Camera Program Amendment Act of 2015" to establish rules for MPD's use and retention of body-worn camera footage with the stated intent of "promot[ing] accountability and transparency, foster[ing] improved police-community relations, and ensur[ing] the safety of both officers and the public."¹

Nearly five years later, and with a \$5.7 million annual cost², the District's body-worn camera program has fallen far short of achieving its intended purpose of greater transparency and accountability of MPD's police practices. As evident from the study conducted by the Lab@DC in 2017³, body-worn camera use, by itself, has not led to any measurable improvements in police-community relations or in how officers conduct themselves.⁴ A reason for this is that no technology can by itself address the discriminatory enforcement of laws or the culture of impunity that plagues MPD from the top down – together which have led to overpolicing of DC's black and brown communities, a historical increase in civilian complaints about officer

¹ 24 D.C.M.R. § 3900.2

² <https://dccouncil.us/wp-content/uploads/2019/01/JPS-Performance-Oversight-Responses-2018-MPD.pdf> page 38

³ <https://bwc.thelab.dc.gov/>

⁴ https://medium.com/@ACLU_DC/body-cameras-wont-solve-larger-problems-with-d-c-police-9fbc497d05eb

harassment and misconduct,⁵ and a severe lack of accountability for officers found to have engaged in misconduct.

However, there are significant problems with the District's body-worn camera program that, if meaningfully addressed, would result in improvements to accountability and transparency of policing in the District. These problems include 1) a lack of accountability in officer compliance with existing regulations and MPD general orders, 2) lack of public access to body-worn camera footage, especially in matters that are of significant public interest, and 3) existing practices that help perpetuate/hide police misconduct.

1. First, police officers' compliance with MPD's General Orders on Body-Worn Cameras are regularly flouted and ignored, without meaningful consequences for those who violate their duty to operate body-worn cameras properly.

MPD General Orders on body-worn camera use require officers to start their body-worn camera recordings at the beginning of any self-initiated police action or as soon as they get a call from dispatch, and to keep their cameras on until the incident/interaction has fully concluded, except in very specific circumstances.⁶ However, The Office of Police Complaints (OPC) 2018 annual report found that 32 percent of the cases it investigated included some form of body-worn camera non-compliance.⁷ As all OPC cases investigations are currently complainant-driven, these are likely just a fraction of the possible cases in which officers fail to comply with the law.

D.C. law requires the Mayor to release publicly available reports on MPD's Body-Worn Camera Program every six months.⁸ The most recent report available on the MPD website is covers the period of time between January and June 2018.⁹ In that report from June 2018, there were 340 reported investigations into cases of officers failing to turn on their body-worn cameras during interactions.¹⁰ In 297 of those 340 investigations, officers were found to have violated their duty to turn on their camera. Existing regulations also require MPD to conduct regular audits to

⁵https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Mid-Year%20FY19_Final.pdf

⁶ MPD General Orders on body-worn camera use require "members, including primary, secondary, and assisting members, shall start their BWC recordings as soon as a call is initiated via radio or communication from OUC on their mobile data computer (MDC), or at the beginning of any self-initiated police action." Page 7 of MPD General Order, Body Worn Camera Program, available at https://go.mpdconline.com/GO/GO_302_13.pdf

⁷In 20% of the cases it investigated in FY18, at least one officer failed to properly use their BWC, by: (1) turning it on late, (2) turning off early, (3) not turning it on at all, or (4) obstructing the camera. And in 19% of the cases it investigated, at least one officer failed to notify the subjects that they were being recorded. Page 14, https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/AR18_Final.pdf

⁸ D.C. Code § 5-116.33. Body-Worn Camera Program; reporting requirements, found at <https://code.dccouncil.us/dc/council/code/sections/5-116.33.html>

⁹ <https://mpdc.dc.gov/node/1116387>

¹⁰<https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20BWC%20Report%20%20January%201%20-%20June%2030%2C%202018%29.pdf>

identify problems with training and officer conduct before they result in complaints, but it's unclear if the Department is complying with these requirements.

Even more troubling is that there seem to be no meaningful consequences for failure to activate cameras or when officers have been found to tamper with equipment.¹¹ Body cameras cannot advance accountability when no clear disciplinary consequences exist for failure to comply with the law. When Officer Brian Trainer failed to turn on his body-worn camera as he fatally shot Terrence Sterling in 2016, Chief Peter Newsham responded that MPD was actively "trying to remind" officers to turn on their cameras.¹² Three years later, MPD must do more than just "remind" officers to follow the policy, and referring officers to additional training when they intentionally fail to turn on or intentionally turn off their cameras during police incidents is insufficient to ensure full compliance.

Violations of MPD's retention policies surrounding body-worn camera footage, especially in cases where officers have engaged in misconduct, further increases community concerns regarding the department's lack of accountability. In July of 2016, WUSA9 filed a FOIA request for footage captured in the incident between now terminated Officer Sean Lojacono and our client, M.B. Cottingham, which showed a second angle of the intrusive and unlawful stop-and-frisk of Mr. Cottingham.¹³ MPD responded that the video had been erased, despite the fact that Officer Lojacono was still under internal investigation for the incident at the time, and that the retention policy requires MPD to retain such footage for five years.¹⁴ Body cameras do little to restore community trust when—despite video-recorded evidence of police wrongdoing—officers can continue to abuse their power with little consequence.

2. Second, MPD has not only refused strict enforcement of its general orders regarding body-worn cameras, but it has also adamantly refused to release footage even in the face of widespread public outrage over police-involved shootings and other high-profile incidents of misconduct.

¹¹ The Office of Police Complaints does not currently have statutory authority to impose discipline on MPD officers itself. However, when an allegation of misconduct is sustained by a complaint examiner or upheld by a final review panel, MPD is statutorily required to impose discipline. "MPD defines education-based development as "an alternative to discipline." MPD used education-based development instead of discipline in two of 85 cases requiring discipline between FY09 and FY16; 11 of 14 cases in FY17; and four of the 10 FY18 cases for which discipline had been imposed by the end of the fiscal year. There were still 10 FY18 cases that were sustained by a complaint examiner for which discipline had not yet been imposed by the end of the fiscal year." Page 24 https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/AR18_Final.pdf

¹² <https://wtop.com/dc/2016/09/dc-officers-body-camera-wasnt-on-during-fatal-shooting/>

¹³ <https://www.wusa9.com/article/news/local/dc-police-body-cam-video-of-questionable-search-purged/65-608071618>

¹⁴ The Metropolitan Police Department's body worn camera (BWC) policy requires videos resulting in internal investigations to be retained for 5 years. See <https://mpdc.dc.gov/page/bwc>

In her 2016 State of the District address, Mayor Bowser championed DC's body-worn camera program as "the most progressive – and most transparent [...] in the country. Because we believe that transparency and accountability strengthen our community."¹⁵ But this has not been the practice.

While D.C. regulations on body-worn cameras allow for the Mayor to, on a case-by-case basis in matters of significant public interest¹⁶, release body worn camera footage, this discretion has been exercised infrequently and unevenly. The Mayor has released footage in some cases to help corroborate MPD's statements about an incident involving a police killing¹⁷, and declined to exercise it in several high profile cases involving police shootings and use of force against District residents¹⁸ – leading to the public presumption in those instances that MPD's version of the events may not have been corroborated by the footage. This is both corrosive of community trust in police and demonstrates a bias in favor of protecting police officers rather than furthering the public's interest in holding public servants accountable.

The ACLU-DC agrees that the public release of body-worn camera footage showing minors, or showing victims or witnesses, or showing anyone in an embarrassing situation, raises legitimate concerns. However, it is possible for MPD to release videos that are of significant public interest while also protecting the privacy of the minors or witnesses in the videos. Instead, MPD regularly denies the release of videos or charges outrageous fees for redactions.

MPD's practice of denying fee-waivers in D.C. Freedom of Information Act requests is another significant barrier to transparency. Under D.C. law, agencies have the discretion to provide documents free of charge or at a reduced rate where the information being sought is considered to be primarily benefiting the general public.¹⁹ However, the ACLU-DC's experience is that MPD consistently denies fee waivers which, in our view, amounts to an unlawful abuse of discretion.

For example, we had to twice appeal a denial of information for footage from troubling police incidents in the Deanwood neighborhood in summer 2018.²⁰ MPD's basis for denial was that releasing the footage could jeopardize officers' right to a fair trial or adjudication, despite the fact that no trial or adjudication was pending. Even once MPD dropped its objections to the

¹⁵ <https://mayor.dc.gov/node/1149292>

¹⁶ According to the regulations, "examples of matters of significant public interest include, but are not limited to, MPD office-involved shootings, significant use of force by an MPD officer, and assaults on an officer requiring hospitalization." 24 DCMR Chapter 39 <https://dcregs.dc.gov/Common/DCMR/RuleList.aspx?ChapterNum=24-39>

¹⁷ Such as when MPD officers fatally shot Gerald Javon Hall. See <https://dcist.com/story/17/01/04/javon-hall-camera-footage/>

¹⁸ See <https://www.wusa9.com/article/news/local/dc/dc-mayor-rejects-calls-to-release-body-cam-video-from-police-clashes/65-578753689>

¹⁹ D.C. Code § 2-532(b) provides that "Documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

²⁰ <https://www.acludc.org/en/cases/sheriff-road-police-encounters-foia-request>

release of the videos following a second appeal, the Department wanted to charge us for privacy redactions to the footage.

The Council intended D.C. agencies to waive fees when furnishing the information would primarily benefit the general public. D.C.'s FOIA law should be updated to fix this.

3. MPD's practice of allowing officers to view body worn footage prior to submitting initial incident reports and its use of body worn cameras to record First Amendment activities furthers the public perception that body worn cameras are being used to shield officers from accountability and surveille communities with impunity.

MPD General Orders allow officers in all cases *other* than a police shooting to view their body-worn camera recording of an incident "prior to completing and submitting any required reports and being interviewed by the appropriate investigative unit."²¹ This means that "members who are involved in a serious use of force, in-custody death, or are the subject of a criminal investigation" can view their body-worn camera footage before recording their initial report of what transpired. An officers' initial recollections of events be influenced by viewing the footage, or worse, an officer could proactively change his version of events. This practice also creates the perception that body cameras are being used to cover up police misconduct, especially as subjects and witnesses are not permitted to view video evidence before giving their statements.

There also exist concerns in many communities that, instead of being a tool for much-needed oversight over police officers, body cameras will become just another surveillance device. Body cameras should not be used for surveillance of the public, especially for the purposes of intelligence-gathering during protests, demonstrations, marches or other First Amendment-protected activities, but current protections in the law do not prevent this possibility. Even if intel gathering were not the intent at the time that video was collected, there would remain the possibility that police at some later date would be tempted to run face recognition on that footage, or use it for other, nebulous "intelligence" purposes – a word that in the police context is directly connected to a long history of surveillance and other abuses.²²

Conclusion:

"The Body-Worn Camera Program Amendment Act of 2015" required the Mayor to establish and consult with an advisory group in creating the rules that would govern MPD's use of body-worn cameras.²³

²¹ MPD General Order of Body-Worn Camera Program, page 20, available at https://go.mpdconline.com/GO/GO_302_13.pdf.

²² <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/why-are-dc-police-keeping-their-body-cameras>

²³ D.C. Code § 5-116.33

As an immediate next step, we recommend that the Council convene a new advisory group to review the existing regulations and make recommendations for changes that reflect what we've learned from the past several years of body-worn camera use in D.C. as well as lessons gleaned from other jurisdictions. The advisory group that was established 2015 failed to include *any* representatives of communities that are the most impacted by crime and by police presence. The new advisory group must not only include these voices but make sure to do so in a way that ensures their input is incorporated into revised regulations.

The ACLU-DC stands ready to work with the Council and all stakeholders to make this happen, and we have included additional recommendations below to improve the efficacy of body worn cameras as a tool for community accountability of police practices.

ACLU-DC Recommendations for Improvements to D.C.'s Body-Worn Camera Program

Enforcing Officer Compliance with Existing Law:

1. Body camera footage should be subject to regular, randomized review to identify problems with training or officer conduct before they result in complaints or incidents. The current regulations require MPD to conduct regular audits. The D.C. Council should exercise its oversight and budget authority to enforce compliance with this requirement.
2. In addition to auditing officers' compliance, MPD must impose meaningful consequences for officer failure to activate cameras or tampering with equipment that go beyond referrals for training or additional education, especially for those officers who are repeated offenders. The Council should explore whether the authority to impose discipline should be removed from MPD and placed with an independent agency like the Office of Police Complaints (OPC).
3. OPC has access to body-worn camera footage but does not have the authority to initiate investigations into incidents if no one has filed a complaint about them with the agency. We believe this is a critical part of achieving real oversight over the actions of MPD. The Council introduced Bill 23-320, "The Special Police Officer Oversight Amendment Act of 2019" on June 4, 2019 which, in part, expands the authority of OPC to initiate investigations that are not complainant driven.²⁴ We strongly support this provision and hope for its speedy passage.

Improving Public Access to Footage:

4. BWC regulations should be updated to provide a presumption of release of body-worn camera footage in matters that are of significant public interest with clear exceptions and exemptions that are enshrined in the regulations. Body camera

²⁴ <http://lms.dccouncil.us/Download/42714/B23-0320-Introduction.pdf>

footage for incidents of significant public interest can be released to the public with appropriate privacy redactions to protect civilians in the videos and would go a long way in demonstrating a sincere commitment to transparency.

5. The D.C. Council should consider an amendment to the Body Worn Camera law that would appoint an independent arbiter (other than the Mayor or Police Chief) to determine when body-worn camera footage is of "significant public interest."
6. MPD often uses the excuse of privacy protections to deny release of body-worn camera footage. The question of when privacy redactions are necessary should be reexamined and defined clearly in the regulations. In its report on the Body-Worn Camera Program Amendment Act of 2015, the Judiciary Committee noted that when "anyone could witness an incident with the naked eye," the resulting "recordings should be public in their unredacted form unless otherwise required by law."²⁵
7. Individuals have the right to view body-worn camera footage of an incident that involves themselves and, in cases where a minor is killed, their parents or guardians can request to view the body-worn camera footage. If an individual above the age of 18 is killed by police officers, their next of kin should have similar access to their body-worn camera footage and this right should be made explicit in the law.
8. The Council intended D.C. agencies to waive fees when furnishing the information would primarily benefit the general public,²⁶ and yet, by leaving fee waivers at the discretion of the agency, MPD has been able to deny them, making access to publicly critical information inaccessible. The Council should update D.C.'s Freedom of Information Act to address this, and the Council should also investigate why MPD's redaction fees are so high.

Privacy Protections and Combatting Public Perception of Misuse

9. Officers involved in critical incidents that involve use of force, in-custody deaths, or those involving officers that are the subject of a criminal investigation should not be permitted to view footage of the incident prior to making a statement or writing an initial report. Instead, they should be permitted to watch the video after their initial statement and have the chance to offer more information and context. Officers may not remember a stressful incident perfectly, so omissions or inconsistencies in their initial account shouldn't be grounds for discipline without evidence of an intention to mislead.
10. The privacy and data sharing provisions of the Body-Worn Camera law are overly broad and should be clearly and narrowly defined and publicly accessible. It is unclear what the specific privacy protections are, by what process the Department will

²⁵ D.C. Council Comm. on the Judiciary, Report on Bill 21-0351, at 16 (2015) available at <http://lims.dccouncil.us/Download/34469/B21-0351-CommitteeReport1.pdf>

²⁶ D.C. Code § 2-532(b) provides that "Documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

require other agencies to adhere to these protections, under what circumstances MPD would enter into these agreements, or whether “other government agencies” include just local D.C. agencies or federal agencies such as Immigration and Customs Enforcement.²⁷ Nor is there any way for the public to know that the Department is complying with the privacy provision of the regulations, posing significant risks to the civil rights and civil liberties of District residents. The Council should pass legislation that would require transparency, meaningful public input, and D.C. Council approval for all government uses of surveillance technology, including body-worn cameras, and which would require MPD and other agencies to develop clear use policies that include detailed privacy and data sharing provisions.²⁸

11. While regulations do allow for officers to record First Amendment assemblies, such recordings should only be made when incidents arise – to document violations of law and police actions – as opposed to recordings that simply document the presence of individual participants at a protest or rally.²⁹ MPD members should also be prohibited from reviewing footage of First Amendment assemblies unless 1) there’s specific reason to believe that the footage contains evidence of a crime or police misconduct, or 2) it is being done as part of a randomized audit. Analysis of body-worn camera footage with other surveillance tools such as facial recognition technology, should also be prohibited.

²⁷ 24 DCMR 3903.2, states “The Department may enter into agreements with other government agencies to provide access to the BWC recordings; provided, that any such agreement shall require the other agency to adhere to the individual privacy protections contained in these regulations or any policy directives issued by the Department.”

²⁸ The Community Oversight of Surveillance-DC, of which the ACLU-DC is a member, has model legislation to address this issue. See <https://www.acludc.org/en/community-oversight-surveillance-dc>

²⁹ “MPD officers may record First Amendment assemblies for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of law enforcement units, and for training purposes; provided, that recording First Amendment assemblies shall not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.”



Council of the District of Columbia
Committee on Judiciary and Public Safety
Councilmember Charles Allen, Chairperson
Public Oversight Roundtable on
**Five Years of the Metropolitan Police Department's
Body-Worn Camera Program: Reflections and Next Steps**
October 21, 2019

Testimony of:

Dawn Dalton
Deputy Director
DC Coalition Against Domestic Violence
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Washington, DC 20005
Tel. 202-299-1181
www.dccadv.org

Good Morning Chairman Allen, members of the Committee, and staff. My name is Dawn Dalton and I am the Deputy Director of the District of Columbia Coalition Against Domestic Violence (DCCADV/the Coalition). DCCADV is the federally-recognized statewide coalition of domestic violence service providers in the District. DCCADV's members include domestic violence crisis and transitional housing providers, counseling, legal service and culturally specific organizations.

Domestic violence is an epidemic. According to the Center for Disease Control, about 1 in 4 women and nearly 1 in 10 men have experienced sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime.¹ And, an analysis done in 2018 by the Washington Post reported that of the 4,484 women killed in 47 U.S. cities – over the past 10 years – 46 percent were killed by an intimate partner.²

When the Coalition first testified about body-worn cameras back in 2015, our concern was about the safety and privacy needs of survivors of domestic violence and sexual assault. We testified then, that confidentiality of a survivor's identifying information is a matter of life and death. That was true then and it is still true now. To demonstrate this, a study of domestic violence survivors who contacted the National Domestic Violence Hotline found that 60 percent of women reported not calling the police because they were concerned about their privacy.³

Being victimized by domestic violence or sexual assault can cause trauma-related illnesses such as depression, post-traumatic stress disorder or anxiety. Not knowing how body worn camera footage will be used or archived adds to the chronic trauma caused by the abusive relationship. While body-worn

¹ Center for Disease Control - <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>

² *Domestic Slayings: Brutal and foreseeable*; Dec. 9, 2018
<https://www.washingtonpost.com/graphics/2018/investigations/domestic-violence-murders/>

³ National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, DC (2015), pg 3. Available at: <http://www.thehotline.org/wp-content/uploads/sites/3/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf>

camera video is useful in that it can improve police accountability and help with more responsive policing, there are harmful collateral risks for survivors. For example, survivors who are recorded during a traumatic event, or immediately thereafter, are held to their statements, mannerisms, or behavior. The challenge is that we know trauma causes memory loss, and yet survivors are locked into statements which were made during a time of intense stress. Hence, survivors of violence are now susceptible to unintended consequences, such as not being able to get a civil protection order or having criminal charges dismissed in court if they deviate from statement made at the scene. Bodycam footage being used in this manner impacts how or if a survivor will interact with MPD. The concern here is that the risks to survivors may outweigh the protections and there should be continued focus and research on the unintended consequences of recording survivors in domestic violence and sexual assault cases.

The District has taken steps to ensure that the public cannot access certain body worn cameras videos by adding language to the Body-Worn Camera Program Amendment Act of 2015 which states that body-worn camera video recorded by the Metropolitan Police Department inside a personal residence or related to an incident involving domestic violence, stalking, or sexual assault is exempt from disclosure, which is an important aspect of this program.

Additionally, part of the Body-Camera Program requires MPD to compile a report related to body-worn camera activities every six months. The report includes, how many freedom of information requests the Department has received in a 6 month period, the outcome of the request, and why access was denied. While the program is fairly new, we urge MPD to continue its bi-annual disclosures. Again, privacy is paramount. Domestic violence advocates and sexual assault advocates need to be made aware of attempts to bypass a survivor's confidential information.

We also urge MPD to incorporate into its training the life-saving reality that the protection of privacy provides to survivors. A survivor's confidentiality and privacy are key to finding safety, healing and self-sufficiency. Confidentiality and privacy should be protected throughout MPDs process of responding

to and investigating cases of domestic violence and sexual assault. There needs to be continued discussions and education on how law enforcement officers interact with survivors. Officers must be aware that these situations are stressful and life altering. Perceiving a survivor as being uncooperative or difficult - instead of acknowledging the continuum of traumatic experiences - will only cause a survivor to have further distrust of law enforcement. Officers need to be transparent and communicate clearly that their body worn camera is recording and take steps to not record information that may put a survivor more at risk. A survivor should have the option to not be recorded, when giving her statement, if any information given to an officer will put them at risk. Every time law enforcement responds and records a survivor's statement, that body-worn camera footage is giving the perpetrator the opportunity to learn more about the survivor and any plans to escape. The survivor knows how dangerous the situation is and should be believed. While there is language in the Body-Worn Camera Program Amendment Act of 2015 which exempts incidents related to domestic violence, stalking or sexual assaults from being publicly disclosed, the abuser or the abuser's legal counsel are still allowed to view the recordings, which puts the survivor at risk.

We encourage the Council, Mayor's office and MPD to remember the needs of survivors of domestic violence and sexual assaults as we continue to learn more about the impact to DC residents of body worn camera program. Thank you for convening this roundtable and I am happy to answer any questions you may have.

3 Minute Testimony

Receiving limited information regarding MPD killing my son on June 12, 2018 has been an extremely horrific nightmare.

I've suffered an enormous amount of anxiety; depression; and grief; all while advocating for public information.

My name is Kenithia Alston and I am the heart-stricken mother of Marquese Alston.

As of today MPD has not provided me with any sufficient facts of this case; as well as not publicly releasing the body camera footage.

And to add insult to my agony, the killing of my son was broadcasted on every local news outlet prior to our family being formally notified by MPD.

I have repeatedly asked DC to publically release the footage.

And considering there is no current policy in which the request is made by the parent of a deceased adult child to view the full footage, this process has been extremely difficult.

My attorney and I went through the formal process of submitting a request to view the footage as outlined in the policy (March 2019).

After 1 month my request was denied based upon Marquese being over age 18. MPD also stated only Marquese could request the video. Certainly, this was a very insensitive response by MPD considering Marquese was deceased.

MPD advised my attorney to contact their General Counsel; however we have yet to receive a response.

We then submitted a written request to your office Councilmember Charles Allen and the Office of the Attorney General of the District of Columbia Karl Racine.

We were granted a meeting with Attorney General Racine; and he shared he would ask Mayor Bowser to publicly release the footage as we so deemed.

The Attorney General also stated if the Mayor did not release the footage publicly, to submit the names of those that would view the footage.

As a result, the Mayor declined to release the body camera footage publicly; and only allowed for the individuals listed in our communication to view the body camera footage.

Disturbingly, the evening before we were scheduled to view the footage, MPD contacted my attorney and stated I could only bring 3 individuals to view the footage. Which meant,

Marqueese's father; my ministerial grief support; and other family members could not witness the alleged accounts.

Certainly, this brought forth a great deal of distress for my family considering my attorney spoke to the Mayor's office 1 week in advance; and all parties that were listed to view the footage were approved.

Unfortunately, MPD allowed me to only view 5 minutes of the body camera footage. Viewing 5 minutes of the body camera footage did not provide concrete evidence to reflect the allegations Chief Newsham stated.

After which my attorney filed a FOIA request; and the request has also been denied as all the other FIOA requests- MPD involved shootings in 2018.

Public access to the full body camera footage would not only shed light on what happened to my son but may also be used as the basis for a formal complaint, a lawsuit or public advocacy

In my case, the body camera footage program has not; (1) fostered accountability; (2) improved police-community relations; and (3) promoted fair administration of justice.

Granting my request and receiving access to this imperative footage is of extreme importance and consistent with transparency- what has been advertised by the department and Mayor Muriel Bowser. Denying me the opportunity to view this breeds suspicion and mistrust of the City.

I appeal to you both on human compassion grounds, but also in the interest of good public policy and public safety. Granting this request creates the opportunity to provide my family and me some measures of peace. It also demonstrates trust-building transparency in the District of Columbia and Metropolitan Police Department.

Tyrone Bryan

October 21, 2019

Councilmember Charles Allen
John A. Wilson Building
1350 Pennsylvania Avenue, NW Suite 110
Washington, DC 20004
RE: Officer Involved Shooting of Marqueeese Alston
CCN#: 18-***-***

Dear Councilmember Allen,

My name is Tyrone Bryan and I am a resident of the District of Columbia, Ward 7. I am also the agonized father of Marqueeese Alston who was brutally killed by the Metropolitan Police Department (MPD), Ward 7 on June 12, 2018; at approximately 7:10 pm.

This has been the most terrifying experience of my life. Since the day Marqueeese was killed by MPD, I have suffered with an enormous amount of agony and pain.

The District of Columbia (Mayor Muriel Bowser and MPD) has treated my family with absolutely no regard for human life. For example, we have reached out to the District on several occasions asking for the release of the body camera footage; concrete evidence and all the investigation details regarding our son's death; yet we have received very limited information. Additionally, no one from the City has provided us with any factual evidence surrounding our son's death; or humanly compassion through expressions of condolences.

I raised my son to be consciously in tuned with his spirituality, intellectually stimulated; conscience and responsible for his actions; and self-sufficient.

Watching my son grow up was a pure joy to my soul. Marqueeese achieved his academic accolades through successfully completing his GED program and earning a HVAC trade in plumbing. Additionally, Marqueeese worked full time and always spent quality time amongst his beautiful daughter; loving family members and friends.

Since my son was killed by MPD, it has brought forth severe emotional distress; which has decreased my momentum for life. This enormous pain has disrupted my physical and mental health; making it difficult to sleep, eat, and even think straight.

Trying to survive this grief of my son on a daily basis is extremely difficult. Previously, I was not concerned whether or not it rained; however now I feel it does not rain enough. When it rains it provides me an opportunity to go outside and release my massive tears of pain.

And to add insult to my agony, I have been advocating for more than 1 year to see the body camera footage of my son being killed by MPD. Unfortunately, the evening before we were scheduled to view the body camera footage, MPD contacted our attorney and stated we could only bring 3 individuals to view the footage. Which meant, because we were limited to the amount of family and legal team members who could witness these alleged accounts, I was not able to view the body camera footage.

Granting my request and receiving access to this imperative information is of extreme importance and consistent with transparency- what has been advertised by the department and Mayor Muriel Bowser. Denying me the opportunity to view this breeds suspicion and mistrust of the City.

In closure this horrific circumstance our family has experienced and what happened to Markeese is what we do not want to occur to anyone else. We demand having an advisory group that includes folks like yourself who have been impacted by the failings of this current body worn camera program.

Respectfully,

Tyrone Bryan

Laurenda Craig

October 21, 2019

Councilmember Charles Allen
John A. Wilson Building
1350 Pennsylvania Avenue, NW Suite 110
Washington, DC 20004
RE: Officer involved Shooting of Marqueeese Alston
CCN#: 18-***-***

Dear Councilmember Allen,

My name is Laurenda Craig and I am the brokenhearted aunt of Marqueeese Alston. I am unable to be present today; however I would like to share my sincere expressions regarding my nephew being killed by the Metropolitan Police Department (MPD).

Unfortunately, the District of Columbia (DC) and MPD has taken our family through extensive turmoil by not providing sufficient facts nor public body camera footage of our loved one Marqueeese Alston- killed by MPD on June 12, 2018.

On Wednesday, June 13, 2018 MPD Sergeant Charles Whittington came to our family's home and simply referred to the killing of Marqueeese as an "incident". Sergeant Whittington provided us with absolutely no information regarding what took place resulting to Marqueeese's death. He merely just gave us a google print out of the DC Medical Examiner's Office contact information and stated we could contact them for next steps. Disturbingly, this has been the only official communication MPD has provided our family regarding Marqueeese's death.

Subsequently, MPD has refused to release 99% of body-camera footage when requested. MPD has also denied families access to the body-camera footage in every high-profile police killing in 2018. Our family along with the families of Jeffrey Price and D'Quan Young have all been awaiting more than 1 year for the body-camera footage related to our loved one's killings.

And instead being allowed access to the full body camera footage-which would not only shed light on what happened to our loved ones but may also be used as the basis for a formal complaint, a lawsuit or public advocacy- we have been forced to rely on the social media videos gathered by witnesses and strangers.

My nephew Marqueeese Alston was a distinguished gentleman who devoted a great deal of his time caring for his then 2 year old daughter Lyric Marshae. I knew my nephew to be someone who valued both his and his family's lives.

I was taken aback at the news of my nephew being killed by MPD. Ironically, I spoke with Marqueeese the week before he was killed. And our conversation reflected on his community supervision and seeking gainful employment to sufficiently take care of his daughter.

Marqueese's daughter deserves truth regarding what happened to her father when MPD killed him. As a family, we also deserve to know what happened when MPD killed our loved one.

Marqueese will not rest peacefully until his story is shared through accountability and truth by MPD.

I appeal to the DC City Council both on human compassion grounds and in the interest of good public policy and public safety to honor my request. Granting this request creates the opportunity to provide my family and me some measures of peace. It also demonstrates trust-building transparency in the District of Columbia and Metropolitan Police Department.

Respectfully,

Laurenda Craig

Ms. Kimberly K. Parker
8787 Branch Avenue
Clinton, MD 20735

To whom it may concern:

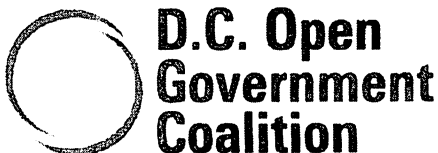
Words are futile to write in an attempt to bring back the family and friends of those who have died due to violence. It is quite an oxymoron when police gun violence is at the helm of it all. For this reason, I will be brief.

I am emphatically writing to share the need for Washington, DC to have a more equitable body camera program. On the Metropolitan Police Department website it states, "In December 2016, the MPD completed deployment of approximately 2,800 body worn cameras (BWCs) across the District. This was the largest deployment of body worn cameras in the country. **The use of BWCs can benefit members of the community and the MPD by improving police services, increasing accountability and transparency for individual interactions, and strengthening trust among law enforcement and the communities they serve. MPD's officers have been open and eager to use this new technology.** The willingness of MPD officers to be early adopters of this technology demonstrates their strong commitment to safeguarding public safety and providing the best service to our residents" Emphasis here belongs to MPDC.

If, in fact, this body camera program was truly designed to "...benefit member of the community...", then, surely, there's a way for footage to be released in a more equitable and timely manner. Enough lives have been lost. No more!

Most sincerely,

Kimberly K. Parker
Friend of the Alston Family
In memory of Marqueese Alston



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**Testimony of the
D.C. Open Government Coalition**

by

Fritz Mulhauser
Co-Chair, Coalition Legal Committee

before the
Council of the District of Columbia
Committee on the Judiciary and Public Safety

Public Oversight Roundtable on
Five Years of the Metropolitan Police Department's Body-Worn Camera Program:
Reflections and Next Steps

October 21, 2019

Thank you for the opportunity to testify for the D.C. Open Government Coalition as the committee reviews the Metropolitan Police Department use of body-worn camera (BWC) video.

The Coalition played an active role, with the Fraternal Order of Police, the ACLU of D.C., the Reporters Committee for Freedom of the Press and other groups and individuals, in discussions leading to the Council's landmark public access requirements in the 2015 BWC legislation and rules.¹

The D.C. policy—to treat BWC video under the same principles of public access and privacy protection as applied to all other records—was unusual at the time. Its significance can't be overstated: it sent a signal to the Metropolitan Police Department and the mayor that, with specific, limited exceptions stated in law, BWC videos must be accessible like any other government records.

The roundtable today we hope will bring together a broad array of evidence and views on BWC effects on policing and the public.² Use in court may be the most significant effect so far.³ Beyond that, we offer two main points about BWC usefulness in police accountability:

- Public access is hindered by high FOIA fees based on excessive redaction;
- Public information about the program and uses of the video could be greatly expanded.

FOIA access is hindered by an extreme redaction protocol that lacks a clear legal basis and imposes unacceptable costs on requesters

Requests have not proved numerous. In 2015, the deputy mayor for public safety claimed that if the public could request BWC videos under FOIA, MPD would receive 4,500 requests annually and

be required to spend millions of dollars to process those requests and redact videos for release. Those estimates were gross exaggerations, meant to scare the Council into exempting BWC videos entirely from FOIA. In fact, according to the biannual data releases mandated by the law, between 2015 and 2018 MPD reported receiving only 476 FOIA requests. It granted 139 of them at least in part.⁴

“In part” refers to redaction, done under rules that are our major concern in today’s testimony. According to the MPD, the D.C. Freedom of Information Act requires blurring many significant details before releasing BWC video (called redaction). MPD employs contractors to blur faces and other identifying information. Requesters are charged \$23 for each minute of the contractors’ work, so charges escalate where multiple officers or lengthy interactions are involved. For example:

- MPD told ANC Commissioner Denise Krepp it would cost over \$5,000 to prepare video of several officers questioning three boys for an hour on the sidewalk in her neighborhood, an interrogation that aroused public concern;
- MPD told ACLU of DC attorney Scott Michelman he could examine video of 31,521 police traffic stops (offered in lieu of specific stop-and-frisk data ordered by the Council to be collected), which at the \$23 per minute rate and some assumptions about the length of each stop was estimated to cost 3.6 million.

Why so costly? The recordings are typically on city streets where there is no expectation of privacy.⁵ But MPD has an overly broad definition of privacy-protected details that should be masked. The agency FOIA officer began to suggest its sweep in explaining the Krepp estimate to a skeptical public meeting in January.⁶

The Coalition has tried in two FOIA requests and an appeal to get records showing MPD redaction policy that guides contractors’ work, and its legal basis, but with limited success.

We received one undated sheet of paper (see attached). Some of the several dozen listed items to be redacted are obvious and raise no questions, such as details of suspects, witnesses or confidential sources. These would be omitted from paper records at least as long as investigation or legal action is under way. But others have highly questionable legal basis:

- faces of anyone not involved,
- face (plus ID and badge) of any officer,
- any house number or name of residences,
- any vehicle license plates, and
- any audio with references to such items.

We asked a second time for any record showing the context of this paper: who wrote it, when and to whom it was sent, if it is now in effect, any contract that incorporates it, and any correspondence about it (such as from contract staff seeking clarification). MPD found not a single further record.

The Coalition has asked the Office of Open Government to give an advisory opinion whether this policy of extensive redactions is consistent with the large body of case law interpreting the privacy exemptions in the D.C. FOIA, especially since the single record we have shows no further guidance on how the rules are to apply to specific requests (for example, how the operator will learn whether law

enforcement action related to a specific video has ended, which can change the privacy standard regarding suspects).

Public information about the program could be better, and uses of the data broader

We have five suggestions for ways BWC video could serve transparency beyond being available upon request:

- **Improve public reporting by adding analysis of BWC video and statistics.** The required reports are brief and late. Only eight data points are required (hours of BWC video collected; how many times BWC equipment failed and why; number and results of internal investigations of complaints for failure to turn BWC on; number of times BWC video used in internal affairs investigations; number of times BWC video used to investigate public complaints; number of BWC assigned to different police units; number, result and cost of FOIA requests; and number of BWC videos by type of event recorded). D.C. Code § 5-116.33(a). Early reports were timely but of the five due for 2017-19, four have been late by as much as 10 months. Though they include important data, none are explored further. For example, what is being done about the widespread failure to activate the cameras (shown in the high rate of sustained complaints of such failures--78 percent of 1,514 complaints)? Nor is there any account of the results of the 20,754 videos used in internal investigations and the 3,779 used by the Office of Police Complaints. The public reasonably expects MPD to use BWC video to improve policing and the law does not stop MPD from exploring the data in more depth in order to report how that is going.⁷
- **Use mayoral override more often to release BWC video that can educate the public.** The law allows the mayor to release video “in matters of significant public interest.” 24 DCMR § 3900.10. A notable occasion when disclosure would have fostered public understanding was the case of controversial police actions in Deanwood in June 2018 (the “Nook’s barbershop” incidents), where police used force on a summer sidewalk that seemed wildly unnecessary to many. Amid huge community outcry, the mayor claimed BWC video showed important details not seen on cell phone video—but then rejected community requests to see those BWC details.⁸ In response to a Coalition request for records documenting any disclosures of BWC videos, the mayor’s FOIA officer said there were no responsive records. The law allows consultation with prosecutors and police about such releases but in response to the Coalition’s request for records of such communications (and possible vetoes) the mayor’s office declined to produce internal communications.
- **Provide data on video viewing by subjects.** Subjects have the right to view BWC video of themselves, 24 DCMR § 3902.5. No public data is available to show whether that right is being exercised or even offered.
- **Improve police YouTube release channel.** Released videos were for a time posted some years ago. See https://www.youtube.com/channel/UCSVpCusv_bqfKHyoJ21jZqQ (six incidents, 129 total videos). A pilot test of more proactive release could show if reviving this is useful to the public.

- **Continue evaluation of the BWC program and expand outside use of data.** MPD has offered no public analysis of its own, nor suggested how it may be following the law that directs that it “shall engage academic institutions and organizations to analyze the BWC program,” 24 DCMR § 3902.7. The phased rollout of equipment and training allowed an elegant but disappointing comparative study of citizen complaints and use of force in 2015-17 by officers on patrol with and without cameras. The MPD and The Lab (a study team within the Office of the City Administrator) prepared that report.⁹ BWC video, as a huge sample of police conduct in the field, is also a rich source for other kinds of studies beyond direct evaluation of camera effects. See, for example, a revealing Stanford review of transcripts of what was said by officer and driver in thousands of traffic stops in Oakland, California. It documented what everyone suspected but couldn’t prove -- large differences in respect shown by the officer based on the driver’s race.¹⁰

Conclusion

The legitimacy of law enforcement efforts to control crime and ensure justice depends on public perceptions that police exercise their monopoly on the use of force equitably. Perceptions are more solid the more they reflect facts.

As the National Research Council put it, officers’ actions are “highly discretionary, and individual officers work virtually without direct supervision.”¹¹ With only a partner or a few other colleagues nearby, police are tempted to shortcut lawful and just work methods in hopes of increasing effective crime control—and then to adjust later testimony to show their actions in the best light.

Judge Shira A. Scheindlin explained in her 2013 opinion in the New York *Floyd* case, “I was forced to analyze the constitutionality of the stops based on testimony given years after the encounter, at a time when the participants’ memories were likely colored by their interest in the outcome of the case and the passage of time. The NYPD’s duty to monitor stop and frisk activity is similarly hamstrung by supervisors’ inability to review an objective representation of what occurred.” In ordering BWCs, she concluded “body-worn cameras are uniquely suited to addressing the constitutional harms” of abusive policing.¹²

Such hopes for the effects of body-worn camera video also accompanied its introduction here a half decade ago, to bring to light the actual uses of this huge discretion. This new kind of evidence in court is now common, with a host of new complexities in adapting old doctrines of evidence; that experience is worth examining further, perhaps by one of the local law schools. As far as other uses in the District, public access has been limited and MPD is silent on its own uses.

So the question remains, as the video is used more and police work becomes more visible, is that work improving—doing better at controlling crime and also ensuring justice?

For the next five years, the agenda should be to make more, and deeper, use of the resource the BWC video affords.

Attachment: “Redactions for Video to be Released” (MPD; undated)

The Open Government Coalition is a citizens' group established in 2009 to enhance public access to government information and ensure the transparency of government operations of the District of Columbia. Transparency promotes civic engagement and is critical to responsive and accountable government. We strive to improve the processes by which the public gains access to government records (including data) and proceedings, and to educate the public and government officials about the principles and benefits of open government in a democratic society.

ENDNOTES

¹ The New York court case that ended NYPD stop-and-frisk policy in 2013 included a one-year limited pilot test of cameras as a remedy. *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013). BWC adoption expanded nationwide beginning in 2014. Conflicting accounts of what happened surfaced following the shooting on Aug. 9, 2014, of Michael Brown, an unarmed black teenager, by Darren Wilson, a white police officer, in Ferguson, Mo. On Nov. 24, 2014, further protests followed the St. Louis County prosecutor's announcement that a grand jury decided not to indict Mr. Wilson. By December 2014, President Barack Obama was proposing a federal funding program for police cameras and the report of the President's Task Force on 21st Century Policing in May 2015 discussed use of new technologies to improve police community relations. After a pilot program that began in September 2014, the D.C. Council in 2015 funded BWC deployment to nearly all uniformed MPD officers. The Council also mandated development, with stakeholder input, of regulations governing MPD reporting on BWC use, and public access to the video. The Body-Worn Camera Program Regulations Amendment Act of 2015 passed in December 2015 and took effect in March 2016. It added only two limited exceptions to existing public records access law: no release of video from inside homes or related to an incident of domestic violence, stalking or sexual assault.

² Nationally, a recent review by George Mason University experts of 70 studies found that initial, high hopes for BWCs have not yet been realized. Use of BWCs has "not had statistically significant or consistent effects on most measures of officer and citizen behavior or citizens' views of police." C. Lum, *et al.*, "Research on body-worn cameras: What we know, what we need to know." *Criminology & Public Policy*, Vol. 18, pp. 93–118 (2019). Available at: <https://doi.org/10.1111/1745-9133.12412>.

³ For example, Fox5 journalist Paul Wagner learned in 2017 from defense attorneys that prosecutors were showing BWC video of field sobriety tests in Superior Court as evidence in their DUI cases. MPD would not release examples unredacted, but the Coalition helped Wagner get the unredacted video from the Attorney General who recognized the First Amendment issue involved (public right of access to materials shown in court). <https://dcogc.org/blog/public-gains-access-to-police-video-shown-in-court-and-d-c-attorney-general-admits-to-reporter-his-earlier-denials-were-mistaken/>. In drug and gun cases, where suppression of evidence depends on whether it was seized lawfully, video may settle disputed accounts of whether police conduct in the street adhered to constitutional boundaries. For example, see *United States v. Gibson*, 366 F. Supp. 2d 14 (D.D.C. 2018) (suppressing evidence since BWC video showed officers' accounts of the basis for their actions were not credible). George Mason University experts surveyed prosecutors early in the movement and found them confident BWC would chiefly help them. L.M. Merola, *et al.*, *Body Worn Cameras and the Courts: A National Survey of State Prosecutors*. (GMU Center for Evidence-Based Crime Policy, 2016). Available at: <http://cebcp.org/wp-content/technology/BWCProsecutors.pdf>. Defenders dealing with the new form of evidence looked forward to being able to confront officers' testimony that differed from that on video. But they have also learned that BWCs may also offer opportunities for police manipulation. Jeffrey Bellin and Shevarma Pemberton, "Policing the Admissibility of Body Camera Evidence," 87 *Fordham L. Rev.* 1425 (2019) (reporting that a "cagey police officer with some knowledge of the evidence rules may seize the opportunity provided by a body camera to provide a contemporaneous narration of events leading to an arrest as a substitute for an

inconvenient court appearance and generally unpleasant cross-examination"). Available at: <https://ir.lawnet.fordham.edu/flr/vol87/iss4/2>. Police in Baltimore were accused of staging drug discoveries for the camera. See Evan Simko-Bednarski, "Bodycam Footage Raises Questions in Baltimore Case," *CNN* (Aug. 25, 2017, 5:48 PM). Available at: <https://www.cnn.com/2017/08/25/us/baltimore-police-body-camera-footage/index.html>. [<https://perma.cc/PJ5L-8MNL>].

⁴ The MPD reports can all be accessed from a page on the agency web site: <https://mpdc.dc.gov/node/1116387>.

⁵ Courts for many years have allowed citizens to record police at work in public, so how could it be wrong to release the same thing on police video? See *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) (holding a private citizen has the right to record video and audio of police carrying out their duties in a public place, and that the arrest of the citizen for a wiretapping violation violated his First and Fourth Amendment rights). This was the first case in which a U.S. Court of Appeals explicitly ruled that private citizens have a right to film police officers in public spaces. The case drew media attention across the United State and has been cited favorably by other Circuit Courts of Appeals that reached similar conclusions in other cases.

⁶ Elizabeth O'Gorek, "ANC 6B Report," *Hill Rag*, Feb. 2, 2019 (reporting that the MPD FOIA Officer "said that redactions are necessary when body worn cameras pick up information from the radios also worn by officers, as well as to obscure identities of people passing by"). Available at: <https://hillrag.com/2019/02/02/anc-6b-report-11/>.

⁷ A dramatic example of video use by the D.C. Office of Police Complaints came to light in a TV news piece this summer. Eric Flack, "'We can't do that' -- Body cam shows D.C. police traffic stop that led to officer reprimand." *WUSA9* (July 9, 2019). Available at: <https://www.wusa9.com/article/news/local/dc/we-cant-do-that-body-cam-shows-dc-police-traffic-stop-that-led-to-officer-reprimand/65-ffb7e0d7-7474-4192-af29-d05b1863a100>. The OPC sustained a citizen complaint about his long detention for a parking violation. Officers suspected him of being involved with others smoking marijuana on a nearby sidewalk and probably hoped to find drugs or weapons in his car. They gave up but only after several field sobriety tests, verbal harassment and searches by officers and a drug dog together yielded nothing to support any charge beyond the original parking ticket. The officers' statements justifying their suspicions were discounted by the OPC investigator, as the BWC video undercut their credibility. One officer was even heard warning the others their conduct was unlawful. How common is bad judgment like this? Analysis of the complaints where video was examined would show.

⁸ Eric Flack, "Community groups call on mayor to release body cam video of police confrontations in Deanwood." *WUSA9* (July 27, 2018). Available at: <https://www.wusa9.com/article/news/local/dc/community-groups-call-on-mayor-to-release-body-cam-video-of-police-confrontations-in-deanwood/65-578097303>. MPD later gave ACLU some documents on the incidents but denied BWC video in a decision overturned on appeal. This committee held a July 12, 2018, roundtable on the incidents.

⁹ D. Yokum, et al., *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial* (The Lab@DC, 2017) (finding no significant differences between officers using BWC and others, concluding that "we should recalibrate our expectations of BWCs. Law enforcement agencies (particularly in contexts similar to Washington, DC) that are considering adopting BWCs should not expect dramatic reductions in documented uses of force or complaints, or other large-scale shifts in police behavior, solely from the deployment of this technology."). Available at: https://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf.

¹⁰ Rob Voight, et al., "Language from police body camera footage shows racial disparities in officer respect." *Proc. Nat. Acad. Sci.*, Vol. 114, No. 25, pp. 6521–6526 (June 20, 2017). Available at: <https://www.pnas.org/content/pnas/114/25/6521.full.pdf>.

¹¹ National Research Council, *Fairness and Effectiveness in Policing: The Evidence* (Washington, D.C.: National Academy Press, 2004), p.2

¹² *Floyd v. City of New York*, 959 F. Supp. 2d 685.

Redactions for Videos to be Released:

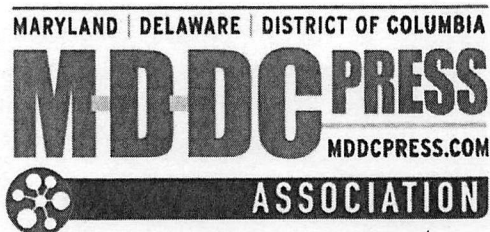
If the determination is made that the video can be released, the following should be redacted:

Images:

1. The faces or any identifying physical attributes (e.g. scars, tattoos, personalized clothing, etc.) of suspects.
2. The faces or any identifying physical attributes (e.g. scars, tattoos, personalized clothing, etc.) of witnesses or non-involved individuals.
3. The faces or any identifying physical attributes (e.g. scars, tattoos, personalized clothing, etc.) of confidential sources.
4. Drivers License or other ID card
5. The faces, name plates, or badge numbers of law enforcement officers.
6. Addresses, house numbers, building names, etc. of residences
7. Vehicle license plates

Audio:

1. Names, Social Security Numbers, dates of birth, home addresses, and other identifying information of suspects.
2. Names, Social Security Numbers, dates of birth, home addresses, and other identifying information of witnesses.
3. The voices, names, Social Security Numbers, dates of birth, home addresses, and other identifying information of confidential sources.
4. Names and other identifying information of federal law enforcement officers.
5. Drivers License numbers
6. Addresses, house numbers, building names, etc. of residences
7. Vehicle license plates numbers
8. Information regarding other calls for service



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To: Committee on Judiciary and Public Safety
From: Rebecca Snyder, Executive Director, MDDC Press Association
Date: October 21, 2019
Re: Comments regarding Public Hearing "Five Years of the Metropolitan Police Department's Body-Worn Camera Program: Reflections and Next Steps"

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of over 112 news media organizations, from large metro dailies such as the Washington Post to small publications such as the Washington Informer and online-only publications such as the Maryland Reporter.

The District's body worn camera program has been in place for five years. At heart, the program is a tool to increase accountability and transparency within the Metropolitan Police Department. Transparency increases the public's trust in institutions and accountability ensures that the actions carried out on behalf of the citizens of the District are just. The press, in its capacity of watchdog for the public, relies on the records of police conduct provided by the MPD. Body camera footage is one of those records.

Has the body worn camera program moved transparency and accountability forward in the District? When it comes down to high-profile police killings, the MPD has not released any footage – to press or to the immediate family members of victims – from the body cameras of involved officers ("DC Police must stop hiding body camera footage," Washington Post, June 16, 2019, https://www.washingtonpost.com/opinions/local-opinions/dc-police-must-stop-hiding-body-camera-footage/2019/06/07/1447504c-82f9-11e9-bce7-40b4105f7ca0_story.html). When MPD is unwilling to release footage on any of the most high-profile shootings, there is still a way to go to create real accountability and transparency within the department.

That is not to say the program does not help investigations of complaints and provide some clarity of events. In the latest report from MPD on body-worn camera footage, for the period July– December 2018, a substantial number of complaints (1405) were investigated using the footage, though the outcome of those complaints is not clear. In the same report, there were 409 sustained internal investigations for officers not recording body camera footage. There is substantial room for improvement in officer compliance with the policy.

Body-worn camera footage is not the only footage of many of these incidents. Cell-phone footage from citizens, uploaded to social media and other platforms often shows a different perspective of the situation. Body-worn camera footage is not infallible. It shows the perspective of the officer, but not necessarily the actions of that officer. It presents one side of the story – a critical one – and often the only side recorded. Releasing body camera footage helps journalists share a more nuanced picture of a situation.

The MPD can and should do more to increase the public trust. Withholding public records, such as body-camera footage, erodes that trust.

**We believe a strong news media is
central to a strong and open society.**

Read local news from around the region at www.mddcnews.com



**Committee on the Judiciary and Public Safety
Public Oversight Roundtable:
"Five Years of the Metropolitan Police Department's Body-Worn Camera Program:
Reflections and Next Steps"**

**October 21, 2019
Room 412**

Testimony of Ajoke Williams, Core Organizer with Black Lives Matter DC

Good morning, Chairman Allen and Committee members. My name is Ajoke Williams, and I am a Core Organizer with Black Lives Matter DC.

Thank you for allowing me the opportunity to submit this testimony during this Public Oversight Roundtable about the Metropolitan Police Department's Body-Worn Camera Program.

Black Lives Matter DC is a member based abolitionist organization centering Black people most at risk for state violence in DC, creating the conditions for Black Liberation through the abolition of systems and institutions of white supremacy, capitalism, patriarchy and colonialism.

In a statement to The Washington Post in 2015, Mayor Bowser declared that DC police would release more footage from body cameras than any other major U.S. city under her plan. This was a departure from her initial opposition to making such videos public. In the same article Bowser explained that continued police shootings necessitated the change, saying the tide has tilted in favor of more disclosure.

In 2017 Mayor Bowser proclaimed that her plan for the body worn camera program "...is the most progressive in the entire nation — the most transparent of its kind."

But, how effective is a footage disclosure program if the public cannot be assured access to that footage?

Every 6 months the Mayor is required by law to release publicly available reports on MPD's Body Worn Camera Program on its website. Currently the website only has the June 2018 report that covers the period of time between January and June 2018. The Council, specifically this committee must demand MPD post the subsequent required reports.

The Council has allowed MPD to continue to break the law by not complying with its required reporting and auditing requirements. Body camera footage needs to have regular, randomized review in order to identify problems with training or officer conduct **before** a complaint or incident. MPD is required to conduct regular audits. Is the Council ever going to make MPD comply with this requirement?

There is no transparency if body camera footage for incidents of significant public interest are not released to the public. MPD's refusal to release this footage is unacceptable, especially because MPD officials then have free reign to shape and with the help of media immediately paint the victim as a bad person, bringing up things in their past that have nothing to do with the immediate incident, and insinuating it was the victim's fault while still conducting an early investigation on the active crime scene.

It is important to remember that the Committee noted in its report on the Body-Worn Camera Program Amendment Act of 2015 (D.C. Council Committee on the Judiciary, Report on Bill 21-0351), that when "anyone could witness an incident with the naked eye," the resulting "recordings should be public in their unredacted form unless otherwise required by law."

In matters of significant public interest, Mayor Bowser has the authority to, on a case-by-case basis, release recordings. "Examples of matters of significant public interest include, but are not limited to, MPD office-involved shootings, significant use of force by an MPD officer, and assaults on an officer requiring hospitalization. In an interview on MSNBC, Mayor Bowser bragged that DC "has the most robust body camera program on the country." She went on to proudly explain how she had already had, "the occasion to release two sets of footage." However, now that the lights and cameras and photo opportunities are long gone, Bowser and MPD have not released footage for most matters of significant public interest since.

The Mayor has clearly used her discretion unevenly – releasing footage in some cases to help corroborate MPD's statements about an incident involving a police killing, and declining to exercise it in several high profile cases involving police shootings and use of force against District residents in which the public may presume MPD's statements may not have been corroborated.

The Council has yet to show Black Lives Matter enough to stand up to MPD and Mayor Bowser, publically and with definitive actions and real consequences, not performative questioning to simply give the appearance that you believe Black people are worthy of fighting for. Thank you.

★ ★ ★

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

September 23, 2019

Mr. Michael Sindram
6645 Georgia Ave., #306, NW,
Washington, DC, 20012

Dear Mr. Sindram,

This letter is in response to a complaint that you filed regarding the conduct of Lieutenant Andrew Dawidowicz of the Fourth District Detectives Section on July 25, 2019. You alleged that Lieutenant Dawidowicz failed to properly manage the fraud allegations that you reported. (CCN# 19-106-197)

The investigation of your complaint was assigned to Captain Daniel Godin of the District Investigations Branch. After conducting an investigation, which included a review of all the investigative information and officer statements, Captain Godin concluded that there was no misconduct on the part of Lieutenant Dawidowicz.

If you are not satisfied with the results of this investigation, you may file a written appeal to the Chief of Police. Your appeal should be addressed to:

Chief of Police
Room 5080
300 Indiana Avenue, NW
Washington, DC 20001

Please refer to IS# 19-002520 when filing your appeal. Both the envelope and the letter should be clearly marked, "Citizen's Complaint Appeal." Should you have any additional questions, please feel free to contact Captain Godin at 202-724-4340 or Daniel.Godin@dc.gov.

9-28-19 / Happy Sabbath!

MPD Chief Peter Newsham

Greetings again in matchless Name of Yehoshua Messiah - Sincerely,
our LORD and Saviour Jesus the Christ!

Captain Godin's "investigation" failed to include newly-discovered
witnesses, felony facts committed by Elizabeth Abel, Roger Abel,
Lynn Coomer, Bonifacio Duran, et al remain pending and waited upon.

Our expedited sit-down to be advanced as your
calendar to earliest practicable date, to aid in the disciplinary
process. Please please to avoid scheduling conflict: 202 722-1281.
Always remember freedom ain't free, because ~~It Is~~ ^{It Is}
The Veterans' me! Thank you in advance for your assistance and
anticipated cooperation.

Leslie A. Parsons
Commanding Officer
Criminal Investigations Division

In Good T. de trust!

Michael Sindram P.O. BOX 1606, Washington, D.C. 20013-1606

SUR EXPEDITED SIT-DOWN ADVANCED ON YOUR CALENDAR SET FOR

Enclaves cited
at All Parties

Why do people commit crimes so readily?
Because crime is not punished quickly enough.
Ecclesiastes 8:11 (TEV)

950 E. L
DTR 009
511 33 65

Ken Smith
TECH. 1123 724-5700

Public Oversight Roundtable:

"Five Years of the Metropolitan Police Department's Body-Worn Camera Program:
Reflections and Next Steps"

October 21, 2019

Room 412

Dulcinea Stuk

My name is Dulcinea Stuk. Thank you for the opportunity to testify this morning. I present the following testimony as a member of SURJ and resident of Ward 7. I give this testimony first with the acknowledgement that I am a white person living in Deanwood, which is a historically black neighborhood, built by black people and on stolen Piscataway Land. I mention this to acknowledge the second wave of settler colonialism that is gentrification and the cultural erasure that threatens this city, and in the context of police accountability hearing, because of the way historically and presently the police are being used to protect the interests of the powerful and wealthy. Daily, I watch the police cater towards white gentrifiers while treating long term residents as criminal for walking home from the metro, or sitting on their front stoop. Over the past 10 years it is in my witnessing of police interactions, and hearing stories from neighbors, including some that are testifying here today, that MPD demonstrates extreme racial bias while policing our community. As a community we need answers. Whom does MPD seek to protect? **Why are police officers in DC above the law?** What will the council do to move toward accountability?

Last week I was in my home, and 4 police officers were in the alley behind my house, which is also a private parking lot. As I watched them, a third police car came and dropped off someone already handcuffs appearing to be transferring them into an additional vehicle. Mind you, 6D is a 4 minute drive from my house. I was curious why they couldn't take him straight to this police station, why there were so many officers present, and most concerning to me, why were they doing in this out of public sight in a hidden alley. As I began recording the incident on cell phone, the officer responded, "Don't Worry, Don't Worry, that's why we have body cameras on." I am worried. As a citizen reflecting on the MPD's transparency over the past 5 years, the words, "I have my body camera on" mean nothing to me.

Why would they mean anything to me or the rest of the community when despite the fact that Marquese Alston was shot 15 times by DC police officers in June 2018, his family has not seen the footage. Despite the fact that D'Quan Young was killed on May 9th, 2018 by a police officer, his family still doesn't know the name of the killer. Despite the fact that Jeffery Price was struck by a police cruiser, his family has not seen the footage of the incident. There is no purpose in capturing footage if the footage is not being released. There is no transparency or accountability in capturing the footage if the footage is not being released.

When there is a shooting in our neighborhood, the police walk into our homes, go into neighbors yards without warrants, literally busting down my neighbor's door without fixing the locks and leaving people's houses open and unsecured to try to "seek answers" and when it's flipped back on them there all of a sudden it becomes a concern for privacy?

It is my understanding that DC law requires the Mayor to release publicly available reports on MPD's BWC program every six months. The most recent report posted online is from June 30 2018? for Where are the reports for the last 12 months? Who is holding the mayor to release these reports and why is DC government doing these reports internally?

Of the data I could find, which is self reported:

- According to the Office of Police Complaints 2018 annual report, 24% of Police Complaints had no body camera footage. Additionally 32% of the cases it investigated, included some form of BWC non-compliance.
- In MPD's **self-report** on Body Worn Camera's 112 FOIA requests were received in that period: 0 were granted in full, 7 had no video, 28 partially granted and 14 denied in full.

Finally, though people have the right to view BWC footage of an incident that involves themselves, in cases where an individual is killed by police officers, their next of kin should have the same access to the footage.

While the goal of the BWC was to increase transparency and accountability for MPD, in its current implementation, which is a fraction of what was intended, the message that Mayor Bowser, Chief Newsham, MPD, and the Council is sending to the public by refusing to release footage and the name of that off duty officer is that police officers in DC are above the law. It is similar to other ways in which Mayor Bowser and the Council have partially implemented the Near Act, partially funded the ONSI or failed to implement it with fidelity and then said, "It's not working". It's not going to work unless you actually implement it with full fidelity. I support the **Recommendations** made by ACLU, which are included in my written testimony, thank you.

Recommendations moving forward:

- The Council should convene a new advisory group to review the existing BWC regulations and make recommendations for changes that reflect what we've learned from the past several years of the BWC program in DC as well as lessons learned from other jurisdictions. This group must include representatives of communities that are most impacted by crime and by police presence.
- **Body camera footage for incidents of significant public interest can be released to the public with appropriate privacy redactions to protect civilians in the videos and would go a long way in demonstrating a sincere commitment to transparency. The D.C. Council should consider an amendment the BWC legislation that would appoint an independent arbiter (other than the mayor or police chief) to determine when BWC footage is of "significant public interest."**
- MPD must enforce recording policies by auditing officers' compliance and imposing meaningful consequences for failure to activate cameras or tampering with equipment. Body camera footage should be subject to regular, randomized review to identify problems with training or officer conduct before they result in complaints or incidents.
- Witnesses and defendants are not allowed to review BWC footage prior to making statements; MPD officers should *not* be allowed to review BWC footage prior to submitting written police reports or making a statement either.
- Council should prohibit the use of new technologies with BWC videos or analysis of video with other surveillance tools, such as facial recognition technology. (See COS-DC campaign)

**Statement on behalf of the
Young Family
Before the
DC Council Committee on Judiciary and Public Safety
Public Oversight Roundtable:
"Five Years of the Metropolitan Police Department's Body-Worn Camera
Program:
Reflections and Next Steps"
By Catherine Young
October 21, 2019
Room 123**

My name is Catherine Young and I am a member of the Brentwood community of the District of Columbia. I present the following testimony on behalf of the members of the Young family.

The Young family is deeply interested in public safety, police protocol, and the use of body-worn cameras throughout the Police Department as a means of increasing safety and fostering better relationships between the Metropolitan Police Department and DC communities. I will center my testimony today on the use of body-worn cameras by the Metropolitan Police Department and possible solutions to make the Body-Worn Camera program more effective.

My family has been a part of DC and the Brentwood Community for more than three generations. My father was a taxi driver for over 40 years and my mother worked in the post office. Their son, my only brother, was killed in a police interaction nearly 25 years ago. At that time, there were not body-worn cameras or an effective way to get a clear visual idea of what actually occurred during the interaction past eye witness statements and inferences. In 2018, my son was killed in a police interaction near my mother's home. Not too far from where my brother also perished. Officers who first responded to the scene were a part of the Body-Worn Camera program, although the footage they captured was not submitted to evidence or used to discover what had occurred in that fatal interaction. The lack of clarity my family has about his death is alarming and unsettling. It's been a little over a year since his passing, and there is still little information about the events that led up to his killing and what officers did afterwards.

It is my family's belief, as well as other DC Citizens, that this Body-Worn Camera program is supposed to be a tool Officers and civilians both can rely on to show what honestly happened in civilian- police dealings. We expect that not only will Officers wear their body cameras and allow them to record, but that any relevant footage they obtain will be utilized towards seeking justice and creating better police protocol. However, it has become strikingly clear to my family and others that that is not always the case. There appears to be a disconnect between wearing the camera and actually using the camera footage, especially in instances where a civilian has died as a result of a police shooting. In my son's case, the footage of his shooting did not paint the same picture that the police force did, and said footage is now nowhere to be found. This program has been applied by the Metropolitan Police Department, but to what level of success? These cameras were meant to create more transparency between the community and the police force. Instead the program is used more as a way to pacify civilians that are upset with police brutality than as a means to end it. The use of body-worn cameras in this department is redundant if camera footage will be used inconsistently, doctored and or deleted by the officers it depicts.

The Young family believes that if the program was reworked it may be able to finally serve its purpose. We believe the issue with footage can be fixed if the police department are not the only people who have initial access to it. We suggest that footage be uploaded to a third-party server that isn't under the Police Department. This server would be an unedited roll of camera footage, that is filed by officer, date and year and can't be deleted without court order from a judge. This server can be under the supervision of a council of mixed career civilians appointed by the DC Council.

It is vital that in our next steps we make the Body-worn camera program as effective as possible, so that both civilians and officers have equitable routes to justice. It is my families hope that the Body-Worn Camera Program's next steps will prevent other families from going through what we, and countless others, already have. In the future

we hope that the police department can be trusted to run this program honestly and effectively without the oversight of others.

DC Police Union

1524 Pennsylvania Avenue, SE
Washington, DC 20003
Office (202) 548-8300 | Fax (202) 548-8306
www.DCPoliceUnion.com



DC POLICE UNION

MEMORANDUM

SUBJECT: Body-worn Camera discussion

DATE: 10/21/2019

- 1) The largest BWC experiment in history was conducted by the MPD and the Lab@DC.
 - It was a randomized controlled trial, where patrol officers were randomly assigned to either wear BWCs or continue patrolling without BWCs (control group).
 - The expectation for many was that the group of officers wearing BWCs would use significantly less force than the control group. This expectation presumes that officers were using more force than necessary, and that having their actions recorded would curtail this unnecessary force.
 - The results did not bear this out. There was no significant difference in uses of force between the groups.
 - This did not surprise us, as we never believed that officers were using force gratuitously in the first place.
- 2) Further, BWC technology provides clear and irrefutable evidence that many individuals filing complaints against officers are being dishonest. Making false statements of this sort is a criminal offense. To protect the complaint process from being weaponized by bad actors, those who make false statements must be prosecuted.
 - There are a number of ways the complaint process is currently being weaponized...
 - The standard of evidence used by the Office of Police Complaints (OPC) is a "preponderance of the evidence."
 - A preponderance of the evidence is an objectively lower standard than "beyond a reasonable doubt," which is used in criminal trials.

- Defense attorneys can take advantage of this lower standard, sending their defendants to OPC to file complaints.
 - If the complaint is sustained under the lower standard, it helps the defense attorney attack the credibility of the officer at trial.
 - There are also several individuals across the city who encroach on any police scenes they see, agitating and provoking officers while filming with their phones. "See you at OPC" is a common taunt from these agitators.
 - This behavior objectively makes police scenes more dangerous and undermines MPD's ability to resolve issues without force or arrest.
 - BWC footage is a valuable tool in protecting the complaint process.
 - The majority of complaints involve events captured on BWC.
 - There are benign reasons why a complaint may not match the facts captured on BWC: imperfect memory, miscommunication, difference of perspectives, etc.
 - However, there are cases where the BWC plainly shows that the complainant made false statements when filing the complaint.
 - To gauge the extent of this problem and the scope of efforts to address it, we have submitted FOIA requests for the number of individuals referred to OAG by OPC for prosecution, the number eventually prosecuted, and the verdicts in those cases.
- 3) BWC footage captures thousands of positive, prosocial encounters between police and community members every day.
- Negative stories about police provoke outrage, generate clicks, and garner audience share. Not surprisingly, reporting about police is disproportionately negative.
 - However, MPD has a wealth of BWC footage showing the positive side of police work, which is the rule and not the exception.
 - We should be using this footage to showcase the positive, professional work our officers do every day, as well as the challenges they face.

November 4, 2019

Council Member Charles Allen, Chairperson
Council for the District of Columbia
Committee on the Judiciary & Public Safety
1350 Pennsylvania Ave. NW
Washington, DC 20004

RE: Public Oversight Roundtable on Five Years of the Metropolitan Police Department's Body-Worn Camera Program: Reflections and Next Steps

Dear Chairman Allen and Members of the Committee on the Judiciary & Public Safety:

We write to you about the hearing on the Police Department's Body-Worn Camera Program to remind the Committee of EPIC's previous testimony before the Committee and to highlight growing support for a moratorium on the use of face recognition technology. EPIC previously testified before the DC City Council in 2008, warning that "facial recognition will make it possible to identify people in public places."¹

The Electronic Privacy Information Center ("EPIC") is a non-partisan research organization established in 1994 to focus public attention on emerging privacy and civil liberties issues.² EPIC is focused on the protection of individual privacy rights, and we are particularly interested in the privacy problems associated with video surveillance in Washington, DC. Police body-worn cameras are a form of video surveillance, and like CCTVs, body-worn cameras raise a number of privacy issues.

EPIC launched a campaign in 2002 to draw attention to public concerns about the use of video surveillance in the nation's capital. EPIC highlighted the history of public protest in Washington, DC and warned the camera surveillance threatened to chill protected First Amendment activity.³

In 2015, EPIC testified before the D.C. City Council, arguing that police body cameras were "an intrusive and ineffective technology that does not address underlying problems with police accountability."⁴ In 2017, a study to assess the benefits of the body cameras worn by the

¹ *Video Interoperability for Public Safety: Hearing Before Comm. on Public Safety and the Judiciary of the D.C. Council* (June 2, 2008) (statement of Marc Rotenberg, Executive Director, EPIC), available at https://epic.org/privacy/surveillance/dccouncil_cctv060208.pdf.

² *About EPIC*, EPIC, <https://epic.org/epic/about.html>.

³ *Observing Surveillance*, <http://observingsurveillance.org>.

⁴ *Public Oversight Roundtable on the Metropolitan Police Department's Body-Worn Camera Program: Hearing Before the Comm. on the Judiciary of the D.C. Council* (May 7, 2015) (statement of Jeramie D. Scott, National Security Counsel, EPIC), available at <https://epic.org/privacy/testimony/EPIC-DC-Council-Body-Camera-Testimony.pdf>.

Metropolitan Police Department concluded that the cameras had no impact on police use of force and civilian complaints.⁵

EPIC attaches our previous statement to remind the Committee of the 1) privacy issues associated with body-worn cameras, 2) need for transparency and adherence to the obligations of the Freedom of Information Act, and 3) alternatives to body-worn cameras to address police accountability.

One of the most critical privacy issues currently associated with video surveillance is the use of face recognition technology. Facial recognition poses threats to privacy and civil liberties. Facial recognition techniques can be deployed covertly, remotely, and on a mass scale. There is a lack of well-defined regulations controlling the collection, use, dissemination, and retention of biometric identifiers. Ubiquitous identification by government agencies eliminates the individual's ability to control the disclosure of their identities, creates new opportunities for tracking and monitoring, and poses a specific risk to the First Amendment rights of free association and free expression.⁶

Consequently, there has been growing opposition to the deployment of facial recognition technology. There is a national effort in the U.S. to ban the use of facial recognition by the government.⁷ California has already enacted a law banning the use of facial recognition technology in law enforcement body cameras.⁸ Additionally, San Francisco, Berkeley, and Oakland, California and Somerville, Mass. have all passed local bans on the use of facial recognition by city agencies.⁹

At the annual international meeting of the privacy commissioners, EPIC presented a declaration from more than 90 civil society organizations and several hundred experts calling for a moratorium on the further deployment of facial recognition.¹⁰ The civil society organizations and experts urged countries to:

1. suspend the further deployment of facial recognition technology for mass surveillance;
2. review all facial recognition systems to determine whether personal data was obtained lawfully and to destroy data that was obtained unlawfully;
3. undertake research to assess bias, privacy and data protection, risk, and cyber vulnerability, as well as the ethical, legal, and social implications associated with the deployment of facial recognition technologies; and
4. establish the legal rules, technical standards, and ethical guidelines necessary to safeguard fundamental rights and comply with legal obligations before further deployment of this technology occurs.

⁵ David Yokum *et al.*, *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial* (Oct. 20, 2017), http://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf.

⁶ See Ian Kerr & Jennifer Barrigar, *Privacy, Identity and Anonymity* (Apr. 1, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396076.

⁷ Ban Facial Recognition, <https://www.banfacialrecognition.com>.

⁸ 2019 Cal. Legis. Serv. Ch. 579 (A.B. 1215).

⁹ See EPIC, State Facial Recognition Policy, <https://epic.org/state-policy/facialrecognition/>.

¹⁰ Declaration: A Moratorium on Facial Recognition Technology for Mass Surveillance Endorsements, <https://thepublicvoice.org/ban-facial-recognition/>.

The use of facial recognition technology on police body-cameras would turn a tool of police accountability into a mobile-mass surveillance platform.¹¹ EPIC urges the D.C. City Council to proactively prevent this from happening and ban the use of facial recognition technology on police body-worn cameras.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Jeramie Scott

Jeramie Scott
EPIC Senior Counsel

Encl.

¹¹ Jeramie D. Scott, *Police Body Cameras: Accountability or Public Surveillance?* (Jan. 29, 2015), <https://blog.epic.org/2015/01/29/police-body-cameras-accountability-or-public-surveillance/>.



ELECTRONIC PRIVACY INFORMATION CENTER

Statement for the Record of

Jeramie D. Scott
National Security Counsel
Electronic Privacy Information Center

Public Oversight Roundtable on the Metropolitan Police Department's Body-Worn
Camera Program

Hearing before the
Committee on the Judiciary
Council of the District of Columbia

May 7, 2015
Washington, D.C.

Chairman McDuffie and members of the Committee on the Judiciary, thank you for holding this public hearing today. The hearing addresses a very timely and important issue—police body-worn cameras.

My name is Jeramie Scott, and I am the National Security Counsel for the Electronic Privacy Information Center or simply EPIC. EPIC is a non-partisan research organization established in 1994 to focus public attention on emerging privacy and civil liberties issues.¹ We work with a distinguished panel of advisors in the fields of law, technology, and public policy.² EPIC is focused on the protection of individual privacy rights, and we are particularly interested in the privacy problems associated with video surveillance.³ Police body-worn cameras are a form of video surveillance, and like CCTVs, body-worn cameras raise a number of privacy issues.

EPIC previously testified before the D.C. Council on the Council's efforts to create a legal framework for the use of video surveillance in Washington, DC.⁴ In that testimony, EPIC stated that video surveillance raises Constitutional issues; the benefits of video surveillance are overstated; and that any implementation of video surveillance needed strong policy and procedures and independent oversight to protect citizen's rights.⁵ The DC City Council adopted several of EPIC's proposals, including restrictions on the collection and use of personal information.⁶

Police body worn cameras raise similar issues. Body cameras do not simply record police activities; they record the activities of the public at large. They implicate the rights of innocent bystanders recorded on tape, particularly peaceful public protesters who frequently gather in the Nation's capital. These devices could easily become a system of mass surveillance. Further, the benefits of body cameras as a tool of police accountability have not been established.⁷

If the DC City Council and the Metropolitan Police Department ("MPD") go forward with the deployment of body cameras, there must be new policy and procedures

¹ *About EPIC*, EPIC, <https://epic.org/epic/about.html>.

² *EPIC Advisory Board*, EPIC, https://epic.org/epic/advisory_board.html.

³ EPIC, *Video Surveillance* (2015), <https://epic.org/privacy/surveillance/>; *Comments of EPIC to DHS*, Docket No. DHS-2007-0076 CCTV: Developing Privacy Best Practices (2008), available at https://epic.org/privacy/surveillance/epic_cctv_011508.pdf; *Comments of EPIC to Metropolitan Police Department for the District of Columbia*, 53 D.C. Reg. 4462: Expansion of CCTV Pilot Program (2006), available at <https://www.epic.org/privacy/surveillance/cctvcom062906.pdf>; EPIC, *Spotlight on Surveillance: D.C.'s Camera System Should Focus on Emergencies, Not Daily Life* (2005), <https://epic.org/privacy/surveillance/spotlight/1205/>.

⁴ *Joint Public Oversight Hearing: Comm. on the Jud. On Public Works and the Environment City Council of the District of Columbia* (2002) (Statement of Marc Rotenberg, EPIC Executive Director), available at https://epic.org/privacy/surveillance/testimony_061302.html.

⁵ *Id.*

⁶ See 24 DCMR §§ 2500-2599.

⁷ See Michael D. White, *Police Body-Worn Cameras: Assessing the Evidence* (2014) (Suggesting there is a lack of research to support claims that body cameras are an effective police accountability measure).

and independent oversight established to protect citizens' rights. And the MPD must be prepared to comply with all current laws, including the Freedom of Information Act.⁸

But let me be clear, given the threat that police body-worn cameras pose as a tool of general surveillance and the alternative methods available to achieve police accountability, EPIC opposes the deployment of body cameras. This is an intrusive and ineffective technology that does not address underlying problems with police accountability.

As a tool of general surveillance, police worn-body cameras pose a significant threat to privacy and civil liberties. Furthermore, the full privacy risks that body cameras pose have not been assessed. Body cameras do not directly record police officers but are worn to point outwards as if from the view of the officer thus focusing its surveillance on members of public. These cameras will often record people at their weakest, most embarrassing, or most personally sensitive moments. The body cameras will capture, for example, victims of domestic or sexual abuse after they have been attacked. They will record individuals that are inebriated, naked, or severely maimed or dead.

Many of these images are likely to end up on the Internet. In one particularly horrific example, the images of a young California girl who died tragically in a car accident were posted online by the California Highway Patrol. She was decapitated. The family sued the agency for the emotional harm that resulted. The agency settled with the family for 2.37 million dollars.⁹

Body cameras have the potential to record a significant amount of footage of citizens not directly interacting with the police or implicated in any crime. Cameras on police will routinely record all of the surroundings, not simply interactions with possible criminals. That means that police will routinely record the images of all people they pass on the sidewalk or street. It means also that the police will record all images of people in a crowd. Much of this information will then become available to supervisors, vendors and others for review and evaluation. A program to promote police accountability could easily become the basis for mass surveillance of the general public.

Mass video surveillance undermines our expectation of privacy in public by permanently recording every detail of our actions. Individual public actions are barely noticed, but mass video surveillance creates a lasting record for infinite replay and scrutiny. The result is the chilling of our legal, constitutionally protected First Amendment activities.

There is also the possibility that body cameras could be coupled with facial recognition technology that will make it possible to identify people in public spaces even if they are not engaged in any suspicious activity. In Dubai, for example, the police will

⁸ DC Code §§ 2-531 – 539.

⁹ Dan Whitcomb, *California Family Settles Lawsuit Over Leaked Crash Images*, Reuters (Jan. 31, 2012), <http://www.reuters.com/article/2012/02/01/us-crash-photos-settlement-idUSTRE81006220120201>.

soon test Google Glass, connected to a database of facial images.¹⁰ The government says that it will help officers identify wanted criminals, but there is no reason the devices would not eventually be linked to general database of facial images. Similarly, the police in Britain are using facial recognition technology for both police body cameras and the six million CCTV cameras in the country.¹¹

Long retention periods could exacerbate the use of facial recognition technology. Lengthy retention periods could allow for the tracking of a person's previous whereabouts through the use of facial recognition on the database of body camera recordings.¹² A similar database structure could develop like the one used for license plate readers where private companies manage billions of records that allow for the commercial data mining of data that goes back years.¹³

Current laws do not provide adequate protection against the identification of innocent individuals without their consent.¹⁴ Consequently, the use of facial recognition technology by law enforcement agencies is expanding within the United States without proper oversight or input from the public. In 2013, the Chicago Police Department deployed facial recognition technology to use on images from surveillance cameras and other sources.¹⁵ Similarly, the Seattle Police Department implemented facial recognition technology on the agency's repository of booking photos.¹⁶

As facial recognition technology moves forward, law enforcement at all levels will seek additional repositories of images to use the technology on. The FBI already uses facial recognition to compare subjects in FBI investigations to millions of license and identification photos retained by state DMVs.¹⁷ The original purpose of ID and driver license photos was not facial recognition searches. Over time, the use cases expanded.

¹⁰ Lily Hay Newman, *Dubai Police Will Wear Google Glass With Facial Recognition Software to ID Crooks*, Slate (Oct. 3, 2014), http://www.slate.com/blogs/future_tense/2014/10/03/dubai_police_will_use_facial_recognition_and_google_glass_to_look_for_wanted.html.

¹¹ Olivia Solon, *UK Police Hope to Catch Suspects with Facial Recognition Tech*, Wired UK (July 17, 2014), <http://www.wired.co.uk/news/archive/2014-07/17/neoface>.

¹² See Alexandra Mateescu, Alex Rosenblat, and danah boyd, *Police Body-Worn Cameras* (Data & Society Research Institute Working Paper 2015), available at <http://www.datasociety.net/pubs/dcr/PoliceBodyWornCameras.pdf>.

¹³ See *id.*

¹⁴ See Kyle Chayka, *The Facial Recognition Databases Are Coming. Why Aren't the Privacy Laws?*, The Guardian (Apr. 30, 2014), <http://www.theguardian.com/commentisfree/2014/apr/30/facial-recognition-databases-privacy-laws>.

¹⁵ Chicago Police Department, *Department Notice D13-11: Facial Recognition Technology* (Aug. 23, 2013), <http://directives.chicagopolice.org/directives/data/a7a57b38-140a7462-10914-0a74-6497bf3eec2deb9c.html?ownapi=1>.

¹⁶ Seattle Police Department, *12.045 – Booking Photo Comparison Software* (Mar. 19, 2014), <http://www.seattle.gov/police-manual/title-12---department-information-systems/12045---booking-photo-comparison-software>.

¹⁷ Craig Timberg and Ellen Nakashima, *State Photo-ID Databases Become Troves for Police*, Washington Post (June 16, 2013), http://www.washingtonpost.com/business/technology/state-photo-id-databases-become-troves-for-police/2013/06/16/6f014bd4-ced5-11e2-8845-d970ccb04497_story.html; See also

History suggests that body camera recordings collected for the purpose of police accountability will eventually be used for secondary purposes beyond the original intent for its collection.

The rise in the push for the implementation of police body-worn cameras comes from a general push for better police accountability. I think it's fair to say that law enforcement has an institutional problem with accountability. It's not just about a few bad actors but about an institution and a culture that often protects these bad actors from consequences. Technology, specifically body cameras, is not the answer to this problem. More surveillance is never the solution but a crutch for bad, ineffective, or improperly implemented policies.

There are other, more productive means to achieve accountability that do not carry the risk of increasing surveillance and undermining privacy and civil liberties. The MPD could lead the way as an example of how to hold police accountable without threatening privacy and civil liberties.

Better transparency, accountability, and oversight need to be instilled into police departments. Accountability needs to be part of police culture at all levels and for all tasks that have a bearing on how well officers perform their duties to serve and protect. Instead of spending millions of dollars on new technology, the MPD should focus on correcting current policies and procedures associated with hiring, training, and discipline—among other areas—to maximize police accountability individually and as a department.

As I stated at the beginning, EPIC is against the MPD's deployment of body cameras. But, if the MPD insists on implementing body-worn cameras, EPIC recommends the following measures:

⇒ **No Exemption from FOIA**

- *Freedom of Information Act Obligations Must be Met:* FOIA is an important tool for public accountability and body cameras, as a police accountability measure, should not be exempt from FOIA. If FOIA obligations cannot be met, including obligations to protect personal privacy, MPD should not deploy body cameras.

⇒ **Limit Collection**

- *Body Camera Footage That Does Not Involve Active Police Work Should Not Be Retained:* Only footage associated with police interactions with the public or crime scenes should be retained. Footage of, for example, the officer merely walking down a busy street should not be recorded.

⇒ **Limit Use**

- *Body Cameras Should be Used for Police Accountability Only:* The use of body camera recording should not be expanded beyond uses associated

EPIC, *FBI Performs Massive Virtual Line-up by Searching DMV Photos* (June 17, 2013), <https://epic.org/2013/06/fbi-performs-massive-virtual-l.html>.

with police accountability now or in the future. The use of body cameras for any form of surveillance should be strictly banned.

⇒ **Limit Access**

- *Access to Body Camera Recordings Should be Limited:* Access to footage should be limited to reasons related to police accountability. The MPD should maintain an audit trail of who accesses the footage and for what reason.

⇒ **Adequate Security**

- *Body Camera Recordings Should be Kept in a Secure Manner to Prevent Theft, Leaks, or Improper Access:*

⇒ **Limit Retention**

- *Body Camera Recordings Should Only be Kept Long Enough to Serve the Purpose of Police Accountability:* Retention of body camera data should be counted in days or weeks—not months or years. Data should be deleted on a periodic basis unless necessary to ensure police accountability.

Our preference would be that police body cameras be used solely for training exercises to assist officers working with supervisors to develop appropriate skills to ensure that procedures are followed during interactions with the public. In this context, it is possible to view body cameras as useful tools for police training. But once these cameras are used in a public setting and capture the images of actual people, many who will be in distress, the privacy concerns will skyrocket and the risks of litigation against the city will become very real.

Conclusion

It is imperative that the MPD, and other police departments across the country, proactively confront police abuse with accountability, oversight, and transparency measures that create a culture of accountability.¹⁸ Body cameras will not do this. Better policies will.

¹⁸ See Appendix A for a few alternative police accountability recommendations to body cameras.

Appendix A

Alternative Suggestions to Body Cameras for Police Accountability

⇒ Hiring

- *Assessing Candidates for the Job:* Hiring should include an assessment of a candidate's potential for abuse including whether the candidate has the skills to address tough situations without unnecessarily escalating the situation.
- *Holding Hiring Officers Accountable:* Those who hire police officers should be held accountable for hiring abusive officers who had red flags during the hiring process or for not implementing tailored training programs to address any red flags as part of the hiring process.

⇒ Training

- *Proper training:* Officers should receive training in how to properly interact with all individuals in order to maximize the chances that situations do not escalate.

⇒ Identifying and Disciplining Abusive Officers

- *Taking First-time and Minor Abuses Seriously:* Initial and minor abuses need to be taken seriously as indicators of a potentially larger problem. Appropriate training or re-training should be required and the seriousness of even minor abuses should be conveyed.
- *Disciplining Officers:* Discipline for abusive officers should be strong enough to act as a deterrent and convey the seriousness of the issue. The police department should not tolerate officers who show a pattern of abuse and supervising officers should be held accountable for repeat offenders they failed to properly discipline.
- *Disciplining Compliant Officers:* Officers who fail to report abuse should be disciplined.

⇒ Independent Oversight

- *Implement Independent Oversight:* Independent oversight is required to ensure compliance with the implemented measures of accountability.

⇒ Transparency

- *Public transparency:* Public transparency measures are necessary including a periodic report detailing the number of police officer abuse incidents, the type of incidents, and the discipline meted out.

ROBERT S. BECKER, ESQ.

November 4, 2019

Hon. Charles Allen
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Metropolitan Police Department Body-Worn Camera Videos

Dear Councilmember Allen:

I helped draft the testimony Fritz Mulhauser delivered on behalf of the D.C. Open Government Coalition at the public oversight roundtable the Committee on the Judiciary and Public Safety held two weeks ago. I also listened to the live stream of most of the hearing.

Several witnesses, including Fritz, alluded to shortcomings in the Metropolitan Police Department's body-worn camera program that deprive the public, crime victims, criminal defendants and the courts of valuable information regarding questionable law enforcement practices. I am writing in my capacity as a criminal defense lawyer and D.C. resident, not in my capacity as a transparency advocate, to highlight some of the reasons the BWC program has failed to live up to expectations and to its potential.

According to MPD General Order 302.13,

3. Members, including primary, secondary, and assisting members, shall start their BWC recordings ... at the beginning of any self-initiated police action.
4. In addition, members shall activate their BWCs for the following events:
 - a. All ... self-initiated calls-for-service;
 - b. All contacts initiated pursuant to a law enforcement investigation, whether criminal or civil;

After an officer fatally shot an unarmed man in 2016, but failed to activate his camera, MPD issued Executive Order 16-009, which says, "[e]ffective immediately, when members who are equipped with BWCs acknowledge receipt of a radio run over the air, or are advising the dispatcher of self-initiated police action over the air, members shall verbally acknowledge activation of their BWC." It elaborates that,

B. Members are reminded that pursuant to GO-SPT-302.13 (Body-Worn Camera Program):

1. Members shall activate their BWCs for all dispatched and self-initiated calls-for-service.

2. Members, including primary, secondary, and assisting members, *shall start their BWC recordings as soon as a call is initiated via radio or communication from the OUC on their mobile data computer (MDC), or at the beginning of any self-initiated police action.*

Id. (emphasis added).

Read together, those regulations require officers to activate their BWCs as soon as they begin pursuing a person suspected of committing a crime, respond to a call from the dispatcher, or respond to a radio broadcast by a fellow officer for assistance pursuing a suspect. But members of MPD's specialized elements assigned to so-called high-crime neighborhoods, Crime Suppression Teams and Gun Recovery Units, routinely activate their BWCs only when they come into face-to-face contact with civilians.

Despite the fact that those elements have proven very effective at making arrests for firearm possession and drug dealing, residents of neighborhoods that benefit from the heightened police presence view the "jump-outs" as the enemy. In large part, residents believe, sometimes with good reason, that the CSTs and GRUs stop people with no legal basis, in hope of catching them with guns or drugs.¹

I represent a man the 5th District Crime Suppression Team arrested shortly after 10 p.m. last New Year's Eve for being a felon in possession of a firearm.² This is a case the U.S. Attorney originally filed in Superior Court, then refiled in federal court in hope of obtaining a longer sentence.

The primary officer claimed to have seen, from a distance greater than 100 feet in the dark, my client holding a red plastic cup containing an unspecified alcoholic drink. Two other officers who were much closer to where the cup was found, and who apparently were facing in that direction, did not see the alleged crime.

As my client walked in the 1300 block of Rhode Island Avenue, N.E., talking to his girlfriend on FaceTime, the first officer enlisted seven CST colleagues verbally and by radio to pursue and stop him for possession of an open container of alcohol (POCA). After five officers nearly surrounded their quarry, my client attempted to run, and the gun in his waistband became visible.

My client denies that he ever held the cup, and two witnesses who were with him a short time before he was arrested, testified at an evidence suppression hearing that he did not have a red cup, and that he does not drink alcohol. Their testimony calls into question the first officer's claim that he had probable cause to arrest my client for POCA.

¹ WAMU documented this problem in a story October 24, 2018.

<https://www.npr.org/2018/10/24/659980871/d-c-s-aggressive-confiscation-of-illegal-guns-leaves-residents-feeling-targeted>.

² It may be hard to have sympathy for my client, who is charged in federal court with being a felon in possession of a firearm. But his case illustrates a serious problem that affects many D.C. residents whether they have committed crimes or not.

The sergeant, who in response the radio broadcast tried to question my client, testified that he did not see a gun until after the foot chase began. His testimony demonstrate that police did not even have reasonable, articulable suspicion to make an investigatory stop, or to pat down my client for weapons.

If police lacked either probable cause or reasonable, articulable suspicion, my client should have been free to ignore the CST officers and keep walking down the street to the New Year's Eve party he planned to attend. But police admitted that when the sergeant approached, they had no intention of permitting him to do so.

The body cam video of the eight CST officers is critical to determining whether the first officer had probable cause, and whether the other officers violated my client's Fourth Amendment rights by preventing him from walking away, even though they had no legal grounds to stop him. According to General Order 302.13 and Executive Order 16-009, the first officer should have activated his camera when he claims to have seen my client holding the cup, and the other seven officers should have activated their cameras when they joined the pursuit in response to his verbal request or to his broadcast lookout. But the first officer did not activate his camera until after other officers detained my client. The sergeant activated his camera as he exited a cruiser and began speaking to my client. Five other officers activated their cameras only after my client began running, and one, who may have been the closest to my client, and to whom my client spoke briefly before the sergeant exited the cruiser, never activated his camera.

Because none of the officers activated their cameras when they should have, all that is available is two minutes of silent video from seven cameras. None of the verbal interactions among the officers were preserved.

At the suppression hearing I asked the first officer about his failure to activate his BWC, and he replied,

I wish I had so we had the audio, ... I typically activate when I make contact with individuals — I'm speaking with them. So[,] because I was not speaking with a citizen or close to approaching a citizen to speak with them because of the distance, I didn't activate my camera at that time.

I pointed out that the General and Executive orders require activation at the beginning of "self-initiated calls-for-service." He said neither his decision to stop my client, triggered by discovery of alcohol in the cup, nor his broadcast lookout constituted a "call[]-for-service." Under his interpretation of the Order, a "self-initiated call[]-for-service" begins "for me, being close to make contact with the individual, I would initiate — according to the general order...."

In opposing my client's evidence suppression motion, the U.S. Attorney argued that the judge should disregard officers' failure to follow the General Order and the resulting absence of the best evidence of what occurred before my client's arrest. It said,

The defendant argues that [the first officer] violated MPD General Orders on the use of his body worn camera by not activating his camera as soon as he saw that a crime was

committed ... however, the defendant misinterprets the General Orders and misapplies the law.... [The first officer] testified that his understanding of the General Orders is that he is to activate as soon as he or a member of his team initiates a contact with a civilian and that is what he would consider a "self-initiated police action" It is important to note that he and nearly all the other members of his team activated their cameras when [the sergeant] exited his vehicle to initiate a contact with the defendant, not before. Thus, all of the officers, including the supervising official on the scene, ... seemed to interpret the General Order the same way that [the first officer] does.

In other words, the judge should not be troubled if all CST members disregard the General Order, a primary goal of which is to promote public trust by "accurately documenting events, actions, conditions, and statements made during citizen encounters, traffic stops, arrests, and other incidents." It does not matter that the officers' misconduct may prevent a criminal defendant from proving that MPD violated his constitutional rights.

The officer's assertion that he wished that he had activated his camera earlier is disingenuous. As WAMU documented, CST and GRU officers use tactics that push the limits of the Fourth Amendment. *See, e.g., Hooks v. United States*, 208 A.3d 741 (D.C. 2019). They delay activating their cameras to cover up their legally questionable actions. *See, e.g., United States v. Gibson*, Dkt. No. 18-Cr.-108, 2018 U.S. Dist. LEXIS 214696, *Mem. Op.* (D.D.C. Dec. 21, 2018).³ Michael Tobin's testimony regarding complaints to the Office of Police Complaints further illustrates this problem.

Today, the judge denied my client's motion to suppress the evidence, finding the officer's and sergeant's testimony to be credible, in part because what they said conformed to the silent videos. Both witnesses testified that they had reviewed the videos in preparation for the hearing. The judge found defense witnesses not credible, in part because in mid-July 2019, they could not recall some details from December 31, 2018. Unfortunately, they had no videos to refresh their recollections.

The judge also credited the first officer because after my client's arrest, the officer went back and made a video of the cup containing red liquid. Researchers have documented instances where officers used this method to create evidence after-the-fact.

It is apparent from testimony of the MPD and police union witnesses that the Council needs to act to ensure proper use of BWCs by the Metropolitan Police. As some witnesses testified, officers who fail to follow General Order 302.13 should be a penalized. Unless the Council takes seriously officers' disregard for the regulations, it is doubtful that many judges will take such misconduct seriously.

³ WAMR-TV in Baltimore reported July 28, 2017 that prosecutors dismissed 34 gun and drug cases after BWC videos appeared to show three officers tampering with evidence at crime scenes. <https://www.youtube.com/watch?v=S-TpmFGXEJs>.

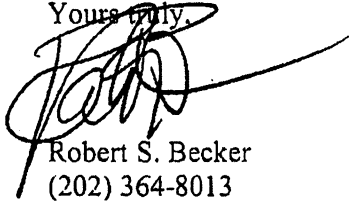
Hon. Charles Allen

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November 4, 2019

Most of the BWC videos from my case have been placed in evidence. Therefore, I can provide you copies if you are interested. If I can assist you in any way please call me.

Yours truly,

A handwritten signature in black ink, appearing to be 'R. Becker', with a long horizontal flourish extending to the right.

Robert S. Becker
(202) 364-8013

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October 21, 2019

Honorable Charles Allen, Chairman
Committee on the Judiciary and Public Safety
District of Columbia Council
Room 412, John A. Wilson Building
1350 Pennsylvania Ave. NW
Washington, D.C. 20004

Dear Chairman Allen,

The Reporters Committee for Freedom of the Press (the "Reporters Committee") respectfully submits the following testimony to the Committee on the Judiciary and Public Safety for the roundtable, "Five Years of the Metropolitan Police Department Body-Worn Camera Program: Reflections and Next Steps." We thank the Committee for its continued attention to this important topic, and for the opportunity to provide testimony concerning the importance of press and public access to body-worn camera videos under the D.C. Freedom of Information Act ("DC FOIA"). D.C. Code §§ 2-531. *et seq.*

The Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee is a nationwide leader in educational and advocacy efforts relating to public access to law enforcement records, including body-worn camera footage, including through its national BWC legislation and policy map.¹ The Reporters Committee was one of the organizations designated by the D.C. Council in 2015 to consult with the Mayor on issues surrounding the Metropolitan Police Department's ("MPD") body-worn camera ("BWC") program.²

Timely access to BWC video is essential for journalists to inform the public about the activities of law enforcement in the District.

Washington, D.C. is one of many municipalities across the country that have adopted BWC technology. In December 2016, MPD led the nation by deploying approximately 2,800 BWCs across the District. As of December 2018, this had grown to more than 3,100 cameras.³

¹ Reporters Committee for Freedom of the Press, *Access to police body-worn camera video*, www.rcfp.org/bodycams.

² D.C. City Council, Fiscal Year 2016 Budget Support Act of 2015 (Bill 21-158), <http://lims.dccouncil.us/Download/33645/B21-0158-Engrossment.pdf>.

³ Council of the District of Columbia, <https://dccouncil.us/wp-content/uploads/2019/09/Five-Years-of-the-Metropolitan-Police-Departments-Body-Worn-Camera-Program.pdf>.

The use of BWC technology can be a positive step toward ensuring that the MPD is transparent and accountable to the public, but only if the press and the public have timely access to the video records created through the use of this technology. Access to BWC videos by members of the news media in particular is critical to ensuring that the public understands actions taken by law enforcement officers, especially in the context of use-of-force incidents.

During the last five years, news media access to MPD BWC videos has enabled reporting on incidents that would not have been fully understood by the public without access to this video, including incidents that resulted in the lethal use of force by MPD officers. For example, following the 2016 fatal shooting of Gerald Hall by MPD officers, there were conflicting reports about whether Mr. Hall had a weapon at the time of the shooting, raising questions about the officers' conduct and prompting protests.⁴ Public release of BWC video of the incident enabled the news media to walk the public through the video moment by moment, pausing at crucial points to show that Mr. Hall did, in fact, have a knife at the time of the shooting, and that his girlfriend had a cut on her arm.⁵

Access to BWC video has also facilitated reporting about cases where use of force by MPD officers was determined to be unjustified, such as the 2016 fatal shooting of Terrence Sterling.⁶ MPD officer Brian Trainer opened fire when Mr. Sterling's motorcycle struck the door of his police cruiser as he was exiting the vehicle. Mayor Muriel Bowser eventually released BWC footage of the aftermath of the incident—but only after “weeks of tension, protests, and conflicting accounts” about what had occurred.⁷ The BWC video shows Mr. Sterling laying on the ground in a pool of blood, with MPD officers administering aid.⁸ Officer Trainer's own BWC was not activated during the incident,⁹ which prompted the Mayor to make changes to the MPD's BWC policy.¹⁰ Access to the BWC video that was captured and released ultimately helped journalists better inform the public about the incident.¹¹

⁴ See Tom Roussey, *Family Says Man Killed in Police-Involved Christmas Day Shooting in D.C. was 'not armed'*, ABC7: WJLA (Dec. 27, 2016), <http://bit.ly/2oEvQmc>.

⁵ See Garrett Haake, *Body Camera Video Shows D.C. Man Armed with Knife When Shot by Police*, WUSA9 (updated Jan. 5, 2017), <http://on.wusa9.com/2BN5lW7>.

⁶ Delia Goncalves, *Officer 'broke policy' in fatal shooting of Terrence Sterling*, WUSA9 (Dec. 5, 2017, 2:23 PM), <https://www.wusa9.com/article/news/local/dc/officer-broke-policy-in-fatal-shooting-of-terrence-sterling/65-496940740>.

⁷ Christina Sturdivant, *D.C. Releases Terrence Sterling Video, Identifies Officer Who Shot Him*, DCist (Sept. 27, 2016, 2:21 PM), <https://dcist.com/story/16/09/27/terrence-sterling-video/>.

⁸ *Id.*

⁹ Keith L. Alexander, *District reaches \$3.5 million settlement with family of unarmed motorcyclist shot dead by police officer*, Wash. Post (Feb. 21, 2018, 3:10 PM), https://www.washingtonpost.com/local/public-safety/dc-settles-with-family-of-fatally-shot-unarmed-motorcyclist-by-police-officer-for-35-million/2018/02/21/4a732138-159e-11e8-8b08-027a6ccb38eb_story.html.

¹⁰ Christina Sturdivant, *D.C. Updates Police Body Camera Policy After Death Of Terrence Sterling*, DCist (Sept. 15, 2016), <https://dcist.com/story/16/09/15/bodyworn-cameras-policy-update/>.

¹¹ Mark Segreaves and Gina Cook, *Officer Who Killed Terrence Sterling to Be Fired*, NBC4 (June 15, 2018, 5:06 PM), <https://www.nbcwashington.com/news/local/Officer-Who-Killed-Terrence-Sterling-Fired-485701821.html>.

Earlier this year, access to BWC video facilitated reporting about an incident that resulted in four MPD officers being reprimanded.¹² In 2018, four MPD officers approached a driver near the Southwest Waterfront after they found him parked in a no-parking zone with his engine running.¹³ The officers detained the driver for more than an hour, subjecting him to two field sobriety tests and a K-9 search.¹⁴ BWC video of the incident enabled the public to see what occurred step by step, facilitating an accurate understanding of the officers' actions that led them to be reprimanded by the D.C. Office of Police Complaints.¹⁵

BWC video can provide the public with a more accurate, complete, and objective understanding of law enforcement actions, but only if the press and public have access to such video, and only if such access is timely. As the sixteen-day delay in the release of BWC video from the aftermath of the fatal shooting of Terrence Sterling illustrates,¹⁶ the MPD and the Mayor's office can do better in ensuring timely access for the news media to report on matters of public concern.

MPD should take additional steps to ensure BWC video of controversial incidents are being retained.

MPD faced a record number of complaints (780) in 2018.¹⁷ In order for journalists to report effectively and accurately about such matters it is imperative that BWC videos of controversial incidents, including use-of-force incidents and interactions that prompt complaints, are retained by the MPD so that they can be released under the DC FOIA.

A DC FOIA request submitted by WUSA9 in July 2018 for records related to an interaction involving an MPD officer that led to a civil rights lawsuit against the MPD illustrates the need to ensure that BWC video is being properly retained in accordance with MPD policy. WUSA9's DC FOIA request for BWC video of a stop and frisk of M.B. Cottingham by MPD Officer Sean Lojacono on September 27, 2017, was denied on the ground that the MPD had "purged" the video.¹⁸ The incident in question involved an allegation by Mr. Cottingham that he was improperly touched by Officer Lojacono during the stop.¹⁹ While a cellphone video of the incident was posted online,²⁰ it only shows one angle. Because the incident sparked an internal

¹² Eric Flack, *Body cam shows DC police traffic stop that led to officer reprimand*, WUSA9 (July 9, 2019, 1:31 PM), <https://www.wusa9.com/article/news/local/dc/we-cant-do-that-body-cam-shows-dc-police-traffic-stop-that-led-to-officer-reprimand/65-ffb7e0d7-7474-4192-af29-d05b1863a100>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Jay Korff, Sam Ford and Brianne Carter, *VIDEO: D.C. police releases body-cam footage in shooting death of Terrence Sterling*, ABC7: WJLA (Sept. 27, 2016), <https://wjla.com/news/local/mayors-office-to-release-police-body-cam-footage-in-shooting-death-of-terrence-sterling>.

¹⁷ See *supra* note 12.

¹⁸ Eric Flack, *DC Police: Body cam video of questionable search 'purged'*, WUSA9 (Oct. 25, 2018, 2:52 PM), <https://www.wusa9.com/article/news/local/dc-police-body-cam-video-of-questionable-search-purged/65-608071618>.

¹⁹ Eric Flack, *Lawsuit filed against DC cop claiming man's rights were violated*, WUSA9 (July 18, 2018, 10:50 AM), <https://www.wusa9.com/article/news/crime/stop-and-frisk/he-stuck-his-finger-in-my-crack-lawsuit-filed-against-dc-cop-claiming-mans-rights-were-violated/65-575086119>.

²⁰ *Id.*

investigation and led to the eventual dismissal of the officer from the force,²¹ BWC video of the incident should have been retained because the footage met the standard for retention under MPD's policy. The MPD's "purge[]" of the video deprived the press—and, thus, the public—of information about an incident that resulted in the dismissal of an officer and a legal settlement paid by MPD.²²

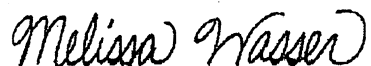
Transparency is necessary for public accountability. Not retaining BWC video of controversial incidents prevents communities from evaluating the conduct of police officers and police departments. MPD should ensure that such videos are retained and work as quickly as possible to release BWC video when it is requested by journalists and members of the public. Having officers better understand department policies surrounding record retention through more training could also improve MPD's compliance with its legal obligations.

The Reporters Committee is gathering information about local journalists' experiences with access to MPD BWC video, which it will share with the public and the D.C. Council.

Over the coming weeks, the Reporters Committee will be working to gather information about local journalists' experiences with requesting and obtaining access to BWC video from the MPD. The Reporters Committee plans to share its findings with the public and the D.C. Council to facilitate further discussion of the important issues raised by this roundtable.

As police departments around the country adopt body-worn camera programs, our nation's capital can and should serve as a model of transparency and accountability. The Reporters Committee thanks the members of the Judiciary and Public Safety Committee for their continued attention to this important issue and their efforts to ensure press and public access to BWC video.

Sincerely,



Melissa Wasser
Policy Analyst

cc: At-Large Councilmember Anita Bonds
Ward 3 Councilmember Mary M. Cheh
Ward 2 Councilmember Jack Evans
Ward 7 Councilmember Vincent C. Gray

²¹ Eric Flack, *MPD officer reacts after board upholds firing for improper body searches*, WUSA9 (Apr. 17, 2019), <https://www.wusa9.com/article/news/crime/stop-and-frisk/grateful-for-the-opportunity-mpd-officer-reacts-after-board-upholds-firing-for-improper-body-searches/65-af07936e-96bb-4d12-add6-9efec0343bb3>.

²² Natalie Delgadillo, *Settlement Reached With D.C. Police After 'Inappropriate Touching' During Stop-And-Frisk*, WAMU 88.5 (Dec. 6, 2018), <https://wamu.org/story/18-12-06/settlement-reached-with-d-c-police-after-inappropriate-touching-during-stop-and-frisk/>.

Madeleine Stirling
ANC 2F05

As a white transplant to DC, my most frequent interaction with police has been while using my right to film them. When I lived in Shaw, the sight of eight to sixteen officers arresting a young Black man was common on my block. I would film in case anyone got hurt. Officers do not like this and do everything they can do discourage residents from filming them.

I remember one time, approximately 12 cops were arresting a Black kid who appeared to be younger than 16. As was the normal procedure, concerned community members in the majority-Black neighborhood came out on their balconies and the sidewalk to keep watch, and I came out to film. One officer was very angry with me for doing so. He called me stupid for caring about the boy. He kept coming over to belittle me, call me nosy for watching, and question whether I was involved in some sort of crime. One comment that stuck out to me was when he said that I shouldn't film because they already had body cameras, and their "footage would be better [than mine] anyway." Eventually, he demanded my address and suggested that he might need to follow up with me, in a clear attempt at intimidation. I think of this interaction every time MPD refuses to release body camera footage related to officer-involved violence.

For example, we have not been able to see the bodycam footage of the May 2018 night an off-duty police officer shot and killed D'Quan Young, a 24-year-old Black man, in Northeast DC. An article shortly after that murder reported:

Witnesses at the time told a local news outlet that the officer repeatedly shot at Young as he walked away. The officer allegedly continued shooting long after Young was on the ground. Witnesses claim he even reloaded his weapon. Young never fired his gun, bystanders said. Several days after the shooting, D.C. Police Chief Peter Newsham reported a contradictory narrative: the officer was the victim and Young "confronted" him.

The officer was not wearing his body camera, and the MPD refused to release security camera footage or bodycam footage from other officers on the scene - or even inform D'Quan's mother as to who killed her son. I have a 24 year old sister who lives in DC. The thought of losing her in such a violent, furtive way is heartbreaking. She is white, so the odds of her being murdered by MPD are very low. The same cannot be said for Black young people like D'Quan.

Another example: we have not been able to see bodycam footage of the June 2018 murder of 22 year old Marqueeese Alston by D.C. police. His mother, Kenithia, wants to be able to explain to Marqueeese's daughter what happened to her dad - but it remains a mystery to the family and the community at large.

MPD has denied multiple FOIA requests for bodycam footage and even deletes footage at will. Mayor Bowser could release footage at any time, but she refuses to do so - even while touting the bodycam program as a successful transparency measure. In 2018, MPD erased bodycam footage relevant to a civil rights lawsuit against a cop, despite department policy requiring it be kept for at least five years. I do not believe MPD should have the power to delete or withhold bodycam footage from the public. The whole program is useless if only the cops can view their own recordings. Officers in DC do not always keep their cameras on, which poses another huge problem. Body cameras alone would not be enough to deter

the racist abuse of my neighbors by MPD if the footage was always released. In DC, even that is not guaranteed.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Metropolitan Police Department



Public Oversight Roundtable On
Five Years of the Metropolitan Police Department's
Body-Worn Camera Program: Reflections and Next Steps

Testimony of
Matthew Bromeland
Chief of Staff

Before the
Committee on the Judiciary and Public Safety
Council of the District of Columbia
The Honorable Charles Allen, Chairperson

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Room 412
Washington, DC 20004
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10:30 A.M.

Good afternoon, Chairperson Allen, members and staff of the Committee, and guests. I am Matthew Bromeland, Chief of Staff at the Metropolitan Police Department (MPD). I am pleased to provide testimony today updating the Committee on the Department's body-worn camera program.

The use of these cameras benefits members of the community and the Department by improving police services, increasing accountability and transparency for individual interactions, and strengthening police-community relations. MPD's officers have been open and eager to use this new technology. The willingness of MPD officers to be early adopters of this technology demonstrates their strong commitment to safeguarding and providing the best service to District residents, workers, and visitors.

The District's History of Deploying Body-Worn Cameras

The Department was not the first law enforcement agency to deploy body-worn camera, or BWC, technology, but it has been at the forefront of implementing this large-scale program with progressive rules on its usage and public access. The Department took its first steps toward deploying BWCs in 2013, when it began researching the potential use of small video cameras that officers wear on their uniform to record interactions with the public. We started exploring BWC before many of the high-profile incidents around the country heightened national attention on police accountability.

In October 2014, the Department launched Phase I of the program, focusing on the selection of the best camera model for MPD officers. After evaluating five different models of cameras, MPD launched Phase II in June 2015 by deploying 400 of the selected cameras to the Fifth and Seventh Districts.

Between March and June 2016, MPD deployed more than 1,200 BWCs for Phase III. The Lab @ DC, an applied science team based out of the Office of the City Administrator, designed this phase of deployment to support a rigorous field experiment on the impact of body-worn cameras. For Police Districts 1, 2, 3, 4 and 6, approximately half of all eligible patrol members were issued a camera by the end of May 2016. The study period lasted until December 2016, when the remaining eligible patrol members received their cameras. I will highlight the findings later in the testimony, and my colleague Anita Ravashankar is here to address any specific questions. But as an initial matter, it is important to keep in mind that as a result of this staggered deployment in support of the study, the BWCs have been fully deployed for less than three years.

Today, more than 3,200 BWCs have been issued to full-duty officers, sergeants, lieutenants, and captains in public contact positions in all police districts and other specialized units. This includes the School Safety Division, Special Operations Division, Narcotics and Special Investigations Division, Youth and Family Services Division, Special Liaison Branch, and

others. The Department is currently in the fourth year of a five-year contract with Taser, which provides the cameras. The contract provides unlimited video storage, a warranty on the hardware, and periodic upgrades if new technology becomes available. We anticipate that Taser will soon be testing updated BWCs that will have sharper video as well as additional microphones to better capture audio.

Scientific Evaluation of the Impacts of Body-Worn Cameras

To better understand the effects of BWCs in the District, MPD partnered with The Lab @ DC to design and implement a randomized controlled trial (RCT) of the BWC program. Under this evaluation, eligible officers in public-facing roles were randomly assigned to wear BWCs (treatment group) or not wear BWCs (control group). By comparing outcomes for officers with cameras to outcomes for officers without cameras, the District hoped to learn more about the effects of the BWCs. The Lab prioritized scientific rigor and transparency by creating a detailed write-up of the planned methodology and statistical analyses – what scientists call a pre-analysis plan. The Lab shared this document publicly, including on the Open Science Framework, before they analyzed the data. This means that The Lab could not, intentionally or unintentionally, change the analytic approach after the fact to support a particular viewpoint. The Lab studied eight different possible outcomes to gauge the impact on police behavior – looking at use of officer discretion, use of force, and complaints, as well as judicial outcomes – prosecutions and dispositions, and found that the cameras did not have a statistically significant impact on any of these issues. Details of the study can be found online at bwc.thelab.dc.gov.

What do these results mean? As The Lab itself noted, it simply means that:

Law enforcement agencies (particularly in contexts similar to Washington, DC) that are considering adopting BWCs should not expect dramatic reductions in use of force or complaints, or other large-scale shifts in police behavior, solely from the deployment of this technology.... There may be effects our study was not designed to measure. We do not rule out that BWCs may affect a small number of incidents, too few to detect in an average estimate.

Other analyses have reported that police use of force and citizen complaints have significantly decreased with the deployment of BWCs. The results in the District may indicate that our study was more robust or that there was less room for improvement. We like to think that our officers were already using their discretion appropriately in low-level arrests, and that our years of efforts to ensure full reporting on use of force were successful, even before the cameras were deployed.

In addition, cameras have an impact on some areas that were not part of the research. The videos improve efficiency in internal investigations as there is documented evidence to support

or refute claims. The cameras aid training efforts by providing real examples of MPD officers operating in ways that illustrate areas for improvement or model positive behavior for their fellow officers. And we believe the existence of video has been important for the 120 individuals who were the subject of a recording and chose to view it at a police station.

Balancing Privacy Rights and Police Accountability

The ability of people in a BWC recording to view the footage, as long as it does not infringe on the privacy rights of another person in the video, illustrates a key challenge with BWCs. Dating back to MPD's first research into BWCs, the District has been keenly aware of its obligation to balance the privacy rights of individuals with the overarching goal of police accountability. One of the most critical issues for people interacting with police is privacy. Often, individuals – whether victims of crime, arrestees, or sick or injured persons – interact with police on one of their worst days. Juveniles and arrestees have strong privacy protections in District law, in part to mitigate the negative impact that information about an arrest may have on a person's ability to secure future employment or housing. Victims also have privacy protections in the law, in particular to protect them from the accused. Even someone stopped for a minor traffic violation has a right to privacy.

Moreover, it is not only someone's face that needs to be protected. The BWCs record almost everything an officer sees or hears. Therefore the videos will capture a much broader range of information, including the faces, voices, and vehicles involved in an incident; private documents, confidential phone calls, and personal phone numbers or even passwords; sensitive information appearing on police cruiser computer monitors; and transmissions on police radios about other incidents, calls, and people. In other words, there are numerous items beyond just faces in BWC videos that must be redacted to protect those individuals' privacy. This is where significant challenges arise.

On the other hand, it is a fair question to ask how the BWC program increases police accountability if the public cannot readily see any videos they want. The short answer is that BWC videos increase accountability by recording interactions from start to finish, and being available to those involved in the incident, partners in the criminal and civil justice system, and government agencies that investigate the police. To weigh these seemingly opposing values – privacy versus accountability – the rules governing access to the BWC footage were developed by the Council and the Executive with broad public participation. A working group led by Kevin Donahue, the Deputy Mayor for Public Safety and Justice, made recommendations to the Council. The Council held a public hearing on the issue before finalizing the legislation governing access to BWC footage.

It may be helpful to imagine access to BWC footage as a pyramid. At its base, providing support and strength to the program, is the broad access allowed to agencies that prosecute

crimes and investigate the police.

Prosecutors at the U.S. Attorney's Office and the Office of the Attorney General have direct access to all MPD BWC footage; they do not have to come to MPD to request any BWC footage. The Office of the Inspector General and the DC Auditor's Office also have access to BWC footage, although they must request the videos through MPD since their need to view it is infrequent.

Generally speaking, parties that are the subject of a BWC recording have access to it as well. Individuals in a recording, their legal representative, or a parent or legal guardian (if the subject is a minor), can view the BWC footage at a police station, as long as the video can be shown without violating the privacy of anyone else in the video. If the footage needs to be redacted, the redacted video can be requested under the Freedom of Information Act. For arrestees or parties in a civil suit, access is governed by regular justice system processes for evidence.

Matters of great public interest

Involved parties

Prosecutors and agencies that investigate police conduct

Additionally, the Mayor, in consultation with the Chief of Police, the Attorney General, and the U.S. Attorney, may release videos in situations that are a matter of great public interest – exceptional circumstances in which releasing the video would serve the public's best interest. Examples of that include officer-involved shootings, serious use of force by an officer, and assaults on an officer requiring hospitalization. As with other police data, the Department also has discretion to make the videos available to support research of interest to the public and law enforcement. In addition to the analysis of the BWC program, this can cover other issues in policing. For instance, we are discussing with researchers how they can use body-worn camera footage to evaluate police stops.

* * *

One of the top priorities for Chief of Police Peter Newsham is to continue to strengthen the relationship between MPD and the residents of all our communities. The BWC program is an important component of that effort as it ensures that every police interaction will be recorded. This helps improve behavior of all individuals being recorded, while providing a record to support any investigation necessary.

I appreciate the opportunity to discuss the Metropolitan Police Department's body-worn camera program with you today. I am available to answer any questions you may have.

A randomized control trial evaluating the effects of police body-worn cameras

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Police body-worn cameras (BWCs) have been widely promoted as a technological mechanism to improve policing and the perceived legitimacy of police and legal institutions, yet evidence of their effectiveness is limited. To estimate the effects of BWCs, we conducted a randomized controlled trial involving 2,224 Metropolitan Police Department officers in Washington, DC. Here we show that BWCs have very small and statistically insignificant effects on police use of force and civilian complaints, as well as other policing activities and judicial outcomes. These results suggest we should recalibrate our expectations of BWCs' ability to induce large-scale behavioral changes in policing, particularly in contexts similar to Washington, DC.

body-worn cameras | field experiments | policing

Police body-worn camera (BWC) programs are rapidly spreading across the United States. In 2015, the US Department of Justice awarded over \$23 million in funding to support the implementation of BWC programs throughout the country (1), and a nationwide survey found that 95% of large police departments either have already implemented or intend to implement a BWC program (2). Much of the expansion has been motivated by a series of high-profile, officer-involved shootings, many of which were captured in bystander video and shared across social media. Stakeholders such as the American Civil Liberties Union, Campaign Zero, and Black Lives Matter have urged the police to equip BWCs as a technological solution to improve policing, or at least to document police practices and civilian behavior to resolve disputes (3, 4).

The widespread support for BWCs is due, in large part, to their anticipated effects on behavior. Both officers and civilians on the street may comport themselves differently if under the watchful lens of a camera. A wide range of research, dating back to the classic experiments at Hawthorne Works (5), has suggested that people act differently when they believe they are being watched, from increasing work productivity and charitable giving (6–9) to encouraging honesty (10), promoting adherence to recycling rules (11), stimulating voter turnout (12), and reducing theft (13). Across these settings, monitoring appears to shift behavior into alignment with socially acceptable conduct.

In the policing context, cameras are expected to encourage officer adherence to departmental protocols and deter police from engaging in unprofessional behavior or misconduct, especially unjustified use of force (14). Similarly, civilians interacting with a BWC-equipped officer may be less likely to engage in inappropriate or combative behavior. The underlying social or psychological mechanisms linking BWCs and behavior could include greater self-awareness, heightened threat of being caught, or a combination of the two. Whatever the exact mechanisms, commentators sometimes allude to a so-called “civilizing effect,” wherein BWCs are predicted to calm all parties involved and reduce the likelihood that violence occurs (15). By capturing the police–civilian interaction, the cameras are also expected to have evidentiary value, both for internal affairs and criminal investigations (15, 16).

The existing evidence on whether BWCs have the anticipated effects on policing outcomes remains relatively limited (17–19). Several observational studies have evaluated BWCs by comparing the behavior of officers before and after the introduction of BWCs into the police department (20, 21). Other studies compared officers who happened to wear BWCs to those without (15, 22, 23). The causal inferences drawn in those studies depend on strong assumptions about whether, after statistical adjustments are made, the treatment is independent of potential outcomes. In particular, we would need to believe that, after conditioning on a set of pretreatment covariates, BWCs were as if randomly assigned.

A small number of randomized controlled trials (RCTs) of BWCs have been conducted, with mixed results. In a series of RCTs conducted across several sites in the United Kingdom and the United States, BWCs appeared to increase police use of force at some sites and decrease it at others (24, 25). Cameras appeared to decrease complaints in some experiments but not others (16, 25). Further trials found no detectable treatment versus control differences on measured outcomes (26). The extant set of RCTs has typically been limited by either small sample sizes or shift-level random assignments that introduce the potential for within-officer spillover (14, 27).

Methods

We collaborated with the Metropolitan Police Department of the District of Columbia (MPD) to design and implement an RCT to evaluate the effects of BWCs citywide. Specifically, as part of MPD's deployment of BWCs to its police force, approximately half of all full duty patrol and station

Significance

Police departments are adopting body-worn cameras in hopes of improving civilian–police interactions. In a large-scale field experiment (2,224 officers of the Metropolitan Police Department in Washington, DC), we randomly assigned officers to receive cameras or not. We tracked subsequent police behavior for a minimum of 7 mo using administrative data. Our results indicate that cameras did not meaningfully affect police behavior on a range of outcomes, including complaints and use of force. We conclude that the effects of cameras are likely smaller than many have hoped.

Author contributions: D.Y., A.R., and A.C. designed research, performed research, analyzed data, and wrote the paper.

The authors declare no conflict of interest.

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Data deposition: The cleaned dataset sufficient for reproducing the difference-in-means estimates of the treatment effects have been deposited in the Open Science Framework, <https://osf.io/p6vuh/>.

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officers were randomly assigned to wear BWCs, while the other half remained without BWCs. With 2,224 MPD members participating in the trial, this study is the largest randomized evaluation of BWCs conducted to date. Our project was deemed "not human subjects research" by the Yale University IRB (protocol no. 2000020390), as all study activities were carried out by MPD.

The primary outcomes of interest were documented uses of force and civilian complaints, although we also measure a variety of additional policing activities and judicial outcomes. All outcomes were measured using administrative data. Before obtaining outcome data, we developed a detailed write-up of the methodology and planned statistical analyses (a preanalysis plan) and publicly shared it on the Open Science Framework. The preanalysis plan is included in *SI Appendix*.

Our study encompassed the entire department and included geographic coverage of the entire city. We identified eligible officers within each of the seven police districts (as well as several specialized units) based on the following criteria: The officer was on active, full duty administrative status and did not have a scheduled leave of absence during the study period, held a rank of sergeant or below, and was assigned to patrol duties in a patrol district or to a nonadministrative role at a police station. Eligible officers within each district or special unit were then randomly assigned to one of two groups: (i) no BWC (control) or (ii) with BWC (treatment). Specifically, treatment entails assignment of an eligible participant to wear and use a BWC in accordance with MPD policy. MPD General Order SPT-302.13 specifies that "[m]embers, including primary, secondary, and assisting members, shall start their BWC recordings as soon as a call is initiated via radio or communication from OUC [Office of Unified Communications] on their mobile data computer (MDC), or at the beginning of any self-initiated police action." The general order enumerates the range of events for which officers are required to activate their BWCs; this list is included in *SI Appendix*.

Randomization was implemented using a block-randomized assignment procedure. This approach, which uses pretreatment information to group officers into blocks before randomly assigning a fixed number of cameras to officers in each block, increases the statistical power of the experimental design and enforces treatment-versus-control balance on the covariates according to which blocking occurs. We applied a two-level blocking approach: The "major" blocks were the seven police districts and three special units, and the minor blocks were constructed using a clustering algorithm based on the background characteristics of the officers (28). Based on the eligibility requirements noted above, our sample consisted of 2,224 MPD members, with 1,035 members assigned to the control group and 1,189 members assigned to the treatment group.

As anticipated in our preanalysis plan, some officers who were assigned cameras did not install or use them, and some officers who were not assigned cameras nevertheless obtained them. We estimate two compliance measures: the number of videos uploaded to the video database by treatment officers and the average length of the videos in minutes, as compared with control officers. If officers complied with the randomization protocol, we would expect that officers assigned BWCs would make vastly more videos per year, as well as have a longer average length of videos, than their counterparts in the control group. On average, treatment officers uploaded about 665 videos annually (compared with 14 videos uploaded among control officers). The average video recorded by a treatment officer was over 11 min long, while the average video recorded by a control officer was just 0.8 min long. For both manipulation check measures, the treatment assignment is both substantively and statistically significant ($p < 0.001$). We conclude that compliance with the study protocol was high.

Following best practices in settings encountering two-sided noncompliance, we conducted all of our analyses according to the original random assignment (29). Our experiment thus recovers estimates of the effect of being assigned to a BWC on a variety of outcomes (the intention-to-treat effect).

Measurement Strategy. We assessed the effect of BWCs on four families of outcome measures: police use of force, civilian complaints, policing activity, and judicial outcomes.

- i) Police use of force was based on officers' self-reported use of force (in accordance with MPD policy). It included a count of all use of force incidents as well as measures of serious uses of force (as defined by MPD policy), nonserious uses of force, and use of force incidents by the race of the subject of force.
- ii) Civilians can file complaints in two ways: with MPD itself or with the independent Office of Police Complaints. Our measure was the total number of complaints associated with an officer from both sources.

We also disaggregated the complaints by disposition: sustained, not sustained, or unresolved due to insufficient facts.

- iii) The policing activity category included traffic tickets and warnings issued, reports taken from particular types of calls for service, arrests on specific charges (e.g., disorderly conduct, traffic violations, assaults against a police officer), and injuries sustained by officers in the line of duty. We used these measures to evaluate the effects of BWCs on officer discretion and activity, as well as on civilian behavior.
- iv) Finally, we examined the effects of BWCs on judicial outcomes, measured by whether MPD arrest charges are prosecuted by the US Attorney's Office (USAO) or the Office of the Attorney General (OAG) and the disposition of those charges. Our examination of this set of outcomes was constrained by limitations in the available data. Namely, we did not have access to the full datasets managed by the USAO, OAG, and the courts. We instead had access to a subset of these data available to MPD, which captures only the initial charges on which an individual was arrested. A consequence is that we were unable to track court outcomes for any changes to those initial charges. As this limitation applies to both control and treatment groups, however, we were still able to conduct a preliminary analysis on the evidentiary value of BWCs.

Due to logistical constraints, MPD deployed cameras on a district-by-district basis over the course of 11 mo. Officers in two of the seven police districts received cameras in late June 2015, with the deployment to the remaining districts taking place from March to May 2016. By integrating randomization directly into the BWC deployment process, we were able to conduct this study at marginally low cost to MPD.

To address the staggered deployment process, the data collection period varies for each police district, based on the start date of BWC deployment in that district. All outcomes were obtained at the officer level and translated into yearly rates. These rates were calculated from the date that the cameras were first deployed in each district. We calculate these rates before and after the intervention based on a window of 212 d, because 212 is the number of days between deployment and the end of the study period for the district that was the last to receive cameras. The pretreatment and post-treatment periods are of the same length for all districts; the pretreatment measurements come from the same 212-d window (in the previous year) as the posttreatment measurements, to account for seasonality in policing and desensitization to the treatment over time.

Because all of our outcomes are unconditional event counts translated into yearly event rates per 1,000 officers, our measurement procedure avoids the posttreatment bias that would be associated with measuring various conditional quantities. For example, we might want to measure the fraction of an officer's civilian interactions that include use of force, but, since the officer-citizen interaction is posttreatment, we cannot condition on it without the risk of bias.

Estimation Strategy. We use two estimators of the average treatment effects: (i) difference-in-means with inverse probability weights to account for differential probabilities of assignment by block and (ii) regression of outcome on treatment assignment with controls for pretreatment characteristics and inverse probability weights. Specifically, we control for the pretreatment value of the outcome (e.g., past use of force), pretreatment covariates for the officer, and indicators for each major block. Eq. 1 provides the exact specification, as preregistered before the realization of outcomes.

$$Y_{POST} = \beta_0 + \beta_1 Z + \beta_2 Y_{PRE} + \beta_3 \text{Block} + \beta_4 X + \epsilon, \quad [1]$$

where Z is the treatment indicator (officer assigned camera or not); Y_{PRE} is the pretreatment value of the outcome under study; Block is a vector of indicator variables for an officer's home district or special unit; X is a vector of pretreatment covariates that includes race, gender, and length of service; and ϵ is the error term. We estimate Eq. 1 using weighted least squares regression with inverse probability weights, which are calculated as the inverse of the probability of each unit being in its observed condition (29). We use HC2 robust standard errors for variance estimation (30). We conduct our primary analysis among officers in the seven districts of DC ($n = 1,922$). We exclude officers in special units from this analysis, as policing activities and camera use patterns may differ between these units and the district officers. We conduct this analysis at the officer level, and report results as a yearly rate per 1,000 officers. Our analyses were conducted by two independent statistical teams, to help avoid coding errors and as a check of convergence in results.

Data Availability. The cleaned dataset sufficient for reproducing the difference-in-means estimates of the treatment effects will be made

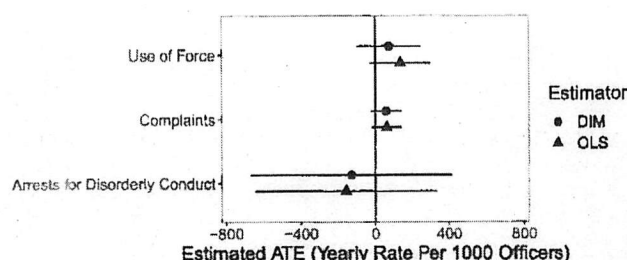


Fig. 1. Average difference (with 95% confidence interval) between BWC and non-BWC groups, per 1,000 officers over a year for police use of force, complaints filed against officers, and arrests for disorderly conduct. We show findings from both our difference-in-means (DIM) estimator and ordinary least-squares (OLS) regression including pretreatment covariates.

available at the Open Science Framework at <https://osf.io/p6vuh/>. We are unable to make public the raw data from which the cleaned dataset was produced, due to privacy concerns of both officers and civilians. We are also unable to release the officer-level covariate information that we use to estimate the covariate adjusted models, as these data would uniquely identify individual officers.

Results

Across each of the four outcome categories, our analyses consistently point to a null result: The average treatment effect estimate on all measured outcomes was very small, and no estimate rose to statistical significance at conventional levels. Because our study has a large enough sample size to detect small effect sizes, these failures to reject the null are unlikely to be due to insufficient statistical power. Fig. 1 plots the estimated average treatment effect (as a yearly rate per 1,000 officers) of BWCs on police use of force, civilian complaints, and officer discretion (as measured by arrests for disorderly conduct). Our best guess is that cameras caused an increase of 74 (SE = 87) uses of force per 1,000 officers, per year. This estimate is not statistically significantly different from zero. The effects on complaints (57 per 1,000 officers per year, SE = 41) and arrests for disorderly conduct (−128 per 1,000 officers per year, SE = 277) were also nonsignificant. Effect estimates on court appearances, judicial outcomes, domestic violence calls, and other measures of police behavior (all null) are included in *SI Appendix*.

Discussion

We consider here a few possible explanations for our null findings. First and most obviously, it is possible the null finding needs no explanation: The devices, in fact, have no effect on behavior. Perhaps neither the officer nor civilian involved in an interaction are actually aware of or affected by the camera, either due to attention being diverted elsewhere or desensitization over time to the presence of the cameras.

Second, Washington, DC may be different from other places in important ways. Perhaps BWCs have no effect in the nation's capital, but they do in other municipalities. We are sympathetic to this possibility, but we also note that, as BWCs were randomly assigned within each of the seven police districts, we conducted the equivalent of seven mini-experiments. Despite substantial district-to-district heterogeneity in baseline outcomes, we observe small, insignificant effects in all seven districts.

A third explanation for the null findings considers the possibility that other factors are masking the true effect of the BWCs: The cameras do affect the measured outcomes, but these effects are being hidden by interference across units, or spillovers from treated to control officers. Approximately one-third of calls were responded to by control officers only, one-third by treatment

officers only, and the last third by a mix of treatment and control officers. This distribution of calls indicates that control officers were frequently performing their duties without cameras nearby. As a check of whether the introduction of cameras affected both treatment and control officers, we examined time trends for documented uses of force and civilian complaints before and after cameras were deployed (analysis presented in *SI Appendix*). We observed no differences in precamera versus postcamera outcomes for either group.

Finally, the true effect of BWCs may be masked by the widespread presence of nonpolice cameras (e.g., civilians' cell phones). Civilians regularly record encounters with MPD members with their own cameras, and closed caption television (CCTV) is widespread. Perhaps the BWCs do not change behavior at the margin, simply because there is no more room to have an effect. To explore this possibility (we note that this analysis was not preregistered), we examined the effect of treatment on use of force at night, when exposure to nonpolice cameras is lower. We also found no effect of cameras on this alternative dependent variable.

Other researchers have suggested that BWCs may fail to affect results because of nonadherence: Officers, for a variety of reasons, may not use their assigned cameras according to departmental policy (15, 22, 26). Officers may fail to activate the camera, for example. We have no indication that nonadherence was a widespread problem in our experiment. For 98% of the days in 2016, MPD averaged at least one video (and often many more) per call for service associated with a treatment officer. Further, even for the 2% of days in 2016 in which the number of videos uploaded was less than the number of incidents for which we would expect them, the difference is minimal, with 96% average adherence based on our measure. That said, effects may depend on the level of discretion officers are given to activate the cameras, although evaluation of that possibility will have to await further experiments.

We acknowledge that BWCs may have had effects that are not measurable with administrative data. For example, it may be the case that there were uses of force that were previously going unreported, and those have now dropped with the introduction of BWCs. However, because our data do not capture unreported uses of force, we are unable to detect this kind of change. As a matter of speculation, however, we find it implausible that we would measure very small effects on reported outcomes but that the true average effect on unreported outcomes is large.

In summary, we measured the average effects of BWCs on documented uses of force and civilian complaints as well as a variety of additional policing activities and judicial outcomes. Our sample size was unusually large, enhancing our ability to detect differences, should they exist. In addition, our comparison groups were constructed from an individual-level officer randomization scheme, which avoids several problems of inference present in other methodologies used to date. We are unable to detect any statistically significant effects. As such, our experiment suggests that we should recalibrate our expectations of BWCs as a technological solution to many policing difficulties.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
POLICE COMPLAINTS BOARD
OFFICE OF POLICE COMPLAINTS**



**PUBLIC OVERSIGHT ROUNDTABLE:
Five Years of the Metropolitan Police Department's Body-Worn
Camera Program**

BEFORE THE

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY
& PUBLIC SAFETY
CHARLES ALLEN, CHAIR**

**Testimony of Michael G. Tobin, Executive Director
Office of Police Complaints**

October 21, 2019

TESTIMONY OF
MICHAEL G. TOBIN,
EXECUTIVE DIRECTOR
OFFICE OF POLICE COMPLAINTS

October 21, 2019

Good morning Chairman Allen and members of the Committee on the Judiciary and Public Safety. I am Michael G. Tobin, the executive director of the Office of Police Complaints (OPC). I appreciate the opportunity to provide testimony regarding the Metropolitan Police Department's body-worn camera program.

The mission of OPC is to improve community trust in the District's police departments through effective civilian oversight. Effective civilian oversight is a common denominator among cities that embrace forward-thinking community policing concepts and practices. In the District of Columbia, the role of community participation in police oversight is provided by OPC and its community-based member board, the Police Complaints Board (PCB). The OPC staff and PCB work to improve community trust by holding police officers accountable for misconduct with an effective community complaint program and by providing a reliable system of police policy review.

On May 8, 2014, the PCB issued a policy recommendation that called for implementation of a body-worn camera (BWC) program in the District. Later that year, the program was launched with the first phase of a pilot program in the Metropolitan Police Department (MPD). At the time, the PCB reasoned that a body-worn camera program might: (1) reduce complaints of misconduct;

(2) facilitate community member complaint resolution; (3) enhance officer training; and (4) reduce civil liability. Since the implementation of the body-worn cameras, the ability of OPC to resolve community member complaints has exponentially increased by providing an independent “third party witness” to the majority of community-police interactions – the body-worn camera. While the number of misconduct complaints OPC has received has doubled since 2014, the amount of time needed to resolve those complaints has drastically decreased due in part to the body-worn camera program.

Nationwide, body-worn cameras were implemented over the past five years at an exponential rate with little reliable empirical research due to the lack of available data. As of June 2018, there were 70 published empirical studies nationwide of various aspects of body-worn camera programs.¹ Within those, there were 32 studies that evaluated the impact body-worn cameras had on officer behavior, while the remaining research reviewed the impact of other areas such as use of force and community member complaints. Due to the different police agency policies regarding when cameras are to be activated and the different research methodologies in each of the studies, the results are mixed in all research areas. There still remains much work to be done in the academic research arena including a lack of reliable research in many areas such as the unknown effects body-worn cameras have on police organizations internally and externally on community trust.

Anecdotally in the District and nationwide, we have not seen dramatic changes in police misconduct since the implementation of body-worn cameras, but we have seen many incremental

¹ Criminology and Public Policy 2019, pp. 1-26: “Research on Body-Worn Cameras.”

and sometimes subtle positive differences in the interactions between police officers and community members. Body-worn cameras have made it much more difficult to shield negative conduct when it occurs, and are a powerful tool for police accountability. From the oversight perspective, body-worn cameras have immensely enhanced the misconduct investigative process and from the police perspective it seems that most officers are supportive as they value body-worn cameras as a means of protection from what they view as false community member complaints.

OPC has been monitoring MPD's body-worn camera usage as it pertains to community member complaints since its full deployment in December 2016. OPC tracks officer's compliance with department body-worn camera policy for all cases we investigate. The results of our findings are published in our annual report each year. In Fiscal Year 2018, about one third of all cases OPC investigated with body-worn camera video had at least one form of non-compliance with department body-worn camera policy. This non-compliance can include: (1) turning the body-worn camera on late; (2) turning the body-worn camera off too early; (3) not turning the body-worn camera on at all; (4) obstructed body-worn camera view; and (5) subject not notified that the body-worn camera was recording. While compliance has been increasing over the years, our review indicates that there is still improvement needed. Since many instances of non-compliance may be obviated by the presence of multiple officers and cameras at a police incident, there remains concern that non-compliance can effect complaint investigations.

In reviewing the past five years of MPD's body-worn camera use and looking forward, OPC recommends that MPD continue improving the body-worn camera training provided to their officers. We have seen incremental decreases in non-compliance over the years as officers become

more familiar with the most effective way to use the body-worn cameras and we hope this continues. Additionally, OPC encourages MPD to review their officers' body-worn camera non-compliance and use it as a tool to inform the continually improved training provided to officers.

We also want to encourage the utilization of actual MPD body-worn camera footage in recruit and professional development trainings to demonstrate both good and bad practices and procedures. This is a simple, clear best practice that can reduce the amount of community member complaints and help to build better community trust.

We have heard from community members that it can be a difficult process to view body-worn camera footage. Complainants have indicated on many occasions that they were not aware of their right to view the body-worn camera footage of the incident that led to filing the complaint. Individuals that are not the subject of a complaint have also indicated difficulty accessing and viewing body-worn camera footage. OPC has created the regular practice of handing out MPD's "Body-Worn Cameras and the Citizen Viewing Process" brochure which provides the process and contact information to make a body-worn camera viewing request to MPD.

We believe that providing more information to the community through outreach efforts would be beneficial, along with revisiting the means by which MPD can publically share, in a timely manner, body-worn camera footage in matters of community concern in order to help improve public trust. A primary function of the body-worn camera program is to improve public trust, but this effect can be negated when public access is restricted to the point that the community questions the efficacy of the program because of these restrictions. A review of the balancing test

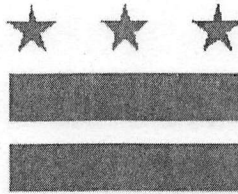
between the fiscal costs of providing body-worn camera access versus the ease of that access may be warranted at this point in the program.

An unanticipated consequence of the program became immediately apparent when OPC began reviewing body-worn camera footage in its investigations. Investigators regularly identify officer conduct in the footage that is contrary to MPD policy, but such conduct is not part of the original complaint that initiated the investigation. Such conduct may be exhibited by the subject officer, or witness officers, at the scene of an incident. Because the conduct was not observed by the complainant, or the complainant did not recognize the conduct as a violation of MPD policy, OPC is prohibited from investigating it under the current statutory scheme. OPC investigations are strictly complaint-driven under the current legislation, and that can limit our effectiveness in such situations. In effect, we must essentially ignore policy violations that are not part of the original community member's complaint when conducting our investigation. While we may refer flagrant examples of violations to MPD, once we have done so, the matter is then out of OPC's purview and MPD must then decide to initiate an entirely new investigation. It would be more economical and efficient for the District if OPC conducted the entire investigation, and this would also improve trust in the oversight process. We suggest that it is time to consider statutory changes to allow OPC to investigate matters that we discover during the course of an investigation regardless of whether a community member has included such matters as an allegation in their complaint.

In the end, having body-worn cameras in any police department is beneficial to all involved parties as it serves as a neutral "third witness" which benefits the officers and creates accountability. While body-worn cameras are not the ultimate and sole solution to improving

community trust and police officer conduct, it has allowed us as a community to take several large steps toward our shared goals. We believe that, in time, empirical research and community sentiment will continue to show that we have made a wise fiscal and human capital investment by implementing the body-worn camera program. I thank the Committee for its time and we will be happy to answer any questions you may have.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY**



COUNCIL OF THE DISTRICT OF COLUMBIA

PUBLIC OVERSIGHT ROUNDTABLE

**FIVE YEARS OF THE METROPOLITAN POLICE DEPARTMENT'S
BODY-WORN CAMERA PROGRAM: REFLECTIONS AND NEXT STEPS**

**Testimony of Niquelle M. Allen, Esq.
Director of Open Government
Board of Ethics and Government Accountability**

**Monday, October 21, 2019
10:00am
John A. Wilson Building
1350 Pennsylvania Avenue NW
Room 412
Washington, D.C. 20004**

Good morning, Chairman Allen and Members of the Committee on the Judiciary and Public Safety. I am Johnnie Barton, the Attorney Advisor for the Office of Open Government. The Director of Open Government, Niquelle Allen regrets that she cannot be here to testify, but I will read her testimony as written. The Office of Open Government, an office within the Board of Ethics and Government Accountability, facilitates District of Columbia Government agency compliance with the Freedom of Information Act (FOIA) and advocates for a fair and efficient FOIA process. The Office of Open Government also encourages the D.C. government to implement transparency policies that will make the government more responsive and accountable to the community it serves.

INTRODUCTION

In order to promote more accountability among law enforcement, the District of Columbia Metropolitan Police Department (MPD) has utilized body-worn cameras (BWCs) for the past five years. These video recordings of police and civilian interactions are intended to deter officer misconduct and eliminate ambiguity in excessive force cases. To that end, BWCs have been a means to improve evidence collection, performance, and accountability. The MPD's BWC program has also received widespread support from the community. I am presenting this testimony today to offer suggestions regarding how this technology can and should advance overall government transparency and foster greater public trust of law enforcement.

BODY WORN CAMERAS AND DC FOIA

The effectiveness of the District's use of BWCs must be viewed through the lens of the FOIA. The videos taken with BWC's are public records that are created and maintained by MPD and the public may request access to those records under FOIA. While citizens have access to BWC footage under FOIA, its release and availability are often limited due to FOIA exceptions. The limited release of BWC footage could call into question the utility of BWCs in providing the public with a timely, relevant, and clear view of MPD officers' actions. There is also a financial barrier to obtaining this information because the cost of producing BWC footage may be passed on to FOIA requesters.

MPD's BWC policies must also take into consideration privacy protections of law enforcement personnel and the public; access protocols; the retention of non-evidentiary video versus video that may be used in the litigation of criminal and civil matters; cost of video storage and the collection of metadata; and the monetary and human capital costs inherent to the review and editing of video pursuant to public access laws.¹ It is a balancing of internal controls and external access that must be weighed within the context of the purpose of FOIA and the public policy of the District that all

¹ Police Executive Research Forum (PERF), *Implementing a Body-Worn Camera Program Recommendations and Lessons Learned* (<http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>).

persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.²

FOIA Exemptions

Although the public can request access to BWC footage, that does not necessarily imply release of records. MPD may reasonably and legally rely upon several exemptions that prevent those public records from disclosure.³ Namely, the investigatory records exemption and the personal privacy exemptions may cause much of the footage to require redaction.⁴

In my meetings with government transparency groups, I have learned that MPD sometimes releases BWC videos that have been redacted beyond recognition — that is, videos with all faces, all voices, all street names, badge numbers, every car tag in sight, and the like redacted. While the redactions based on the law enforcement FOIA exemptions may be valid, if the BWC camera footage that is released is unrecognizable, how does that make MPD transparent? Does it build public trust? I argue that it may have the opposite impact. If BWC footage is released to the public in extremely redacted form, the public does not get the full story and it may appear as if the government has something to hide.

In determining, how to redact BWC footage in response to a request, FOIA law directs MPD to balance justifications for and against withholding records. While maintaining the public's privacy and protecting witness identity are significant justifications for redacting videos, MPD must communicate its redaction policies more clearly and consider the utility of releasing video footage that is clearly of no value because of the redactions. Releasing these excessively redacted videos is not in the public's interest and creates a higher level of mistrust of police operations.

MPD should counter this negative impact with thoughtful, clear policies that inform the public — in plain language — of when it will release BWC footage and under what conditions. Moreover, MPD should inform requesters that they may receive severely redacted videos prior to releasing them. MPD's articulation of clear, well-reasoned policies about the release of BWC footage in response to FOIA requests will bolster the long-term success of the BWC program.

² D.C. Official Code § 2-531

³ D.C. Official Code § 2-532 affords to any person the "...right to inspect...and to copy any public record of a public body" except as expressly provided in the enumerated exemptions under D.C. Official Code § 2-534.

⁴ D.C. Official Code § 2-534(a)(3)(A-F) exempts investigatory records compiled for law enforcement purposes if release would interfere with enforcement proceedings; Council investigations; Office of Police Complaint investigations; deprive a person of due process; constitute and unwarranted invasion of personal privacy; disclose a confidential source; disclose investigative techniques; endanger law enforcement personnel. D.C. Official Code § 2-534(a)(2) exempts from disclosure information of such a personal nature that release would constitute an unwarranted invasion of personal privacy.

Video Editing and Redaction

Another recurring issue related to requests for BWC footage is the cost of producing the records. MPD should release to the public, in the form of policy or regulation, redaction guidance that explains the cost of the act of redaction in actual work hours (cost per hour). MPD should also provide guidance on expected acceptable time frames for completing the video editing and redaction. Promulgating regulations or policies respecting cost per hour for production and guidelines for redacting would serve the public interest by clarifying the video production process.

MPD currently uses an outside contractor to perform redactions. I also encourage MPD to consider internal resources to edit its BWC video. Having government personnel perform video redactions could reduce costs to the public to receive BWC footage. The FY 2021 budget should assist MPD to expand the BWC program by hiring additional staff to assist in handling video requests from the public, and requests from other law enforcement, prosecuting agencies, courts and defense attorneys. Moreover, the District should consider utilizing the Office of Cable Television, Film, Music, and Entertainment (OCTFME) to assist with this process. OCTFME has state-of-the-art video editing capability. MPD should consider partnering with this agency to edit its BWC footage. Using internal resources could result in a cost savings and decrease the amount of time it takes to turn over footage.

CONCLUSION

Thank you, Chairman Allen, for the opportunity to testify. I am happy to answer any questions from the Committee.